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An Analysis of Southern Africaôs Food Safety Standards within the Broader Framework Set by the WTOôs SPS Measures: A South African Case Study

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WitsETD

A dissertation submitted to the Faculty of Arts, University of the Witwatersrand, Johannesburg, in fulfilment of the requirements for the degree of Master of Arts.

Johannesburg, 2011

Declaration

This dissertation is entirely my own work and has not been previously submitted as a dissertation or thesis for any degree at any other university.

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University of the Witwatersrand, Johannesburg, 2011

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My sincere appreciation and gratitude is expressed to all the people I interviewed for this dissertation. Without their cooperation, willingness and interest, this study would not have been possible.

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Dedication

My parents -

To whom I owe everything

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Abstract

This dissertation seeks to identify the existence of the International Food Safety Complex (IFSC) within the international arena. The analysis of the IFSC also contributes to an emerging area of research about international institutional complexes, in particular how they emerge and form functional niches. The IFSC is examined in light of Southern Africa where the notions of the timing and absolute demand for international institutions adds dynamics that have not yet been considered in international institutional literature. This dissertation assesses how food safety regulation in the Southern African region functions in light of a cooperative IFSC and uses South Africa as a case study to offer some insight into the opportunities and challenges that exist in the African region.

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Problem

Recent years have seen a growing concern over health risks associated with food products and this has resulted in increased interest in the World Trade Organization`s Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), most particularly by developed countries. A subsequent consequence has been that, as developing countries are beginning to increasingly engage in international trade in an effort to develop, societal expectations within the international trade arena are rapidly changing and these countries can no longer afford to neglect the importance of food safety.

According to the World Health Organisation food security consists of three tenets: access to i) sufficient; ii) safe; and iii) nutritious food.[1] While food insecurity is a pressing issue world-wide, it`s effects are felt most poignantly in developing regions such as Africa, where its existence has many times had detrimental effects on both economic and political security. However, where many governments seek solutions to these problems through efforts to secure sufficient and nutritious food for their populations, food safety has remained a tenet that many African countries have overlooked in an effort to tackle more palpable issues such as famine, malnutrition and starvation. In developing countries, many cases of food-borne illness go unreported and unrecognized, yet this type of illness is a significant contributor to the burden of disease in these countries. Improving food safety is therefore not only linked to improving a statesô developmental status, but also its public health outcome and this must be an inherent part of any strategy to reduce poverty and hunger.[2]

Developing countries seeking to utilize their competitive advantage in food production to export food products are now facing regulations that seem akin to Non-Tariff Barriers to trade, in the form of food safety standards. The ability to manage food safety risks is now a prerequisite for participation in the international trade arena and increasing capacity to take advantage of trade opportunities needs to become an important element of many developing countriesô strategy to reduce poverty. Food safety thus has a dual role in poverty alleviation, it is as important to public health as it is to market development. This dissertation postulates that domestic and international imperative has resulted in the development of an International Food Safety Complex (IFSC) that oversees and ensures fairness in the arena of food safety standards and assists developing countries improve technical capacity in this area.

[1] World Health Organisation, 'Trade, foreign policy, Diplomacy and Health : Food Security', http://www.who.int/trade/glossary/story028/en/, 2011. Accessed on 13 February 2011.
[2] Unnevehr L and Hirschhorn N, Food Safety Issues in the Developing World, World Bank , 2000, p. 7.

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The mandate of the Sanitary and Phytosanitary Committee (SPS Committee) is to implement the provisions of the SPS Agreement and further of its objectives, particularly with respect to harmonization.[3] The SPS Agreement seeks to strike a balance between the need to ensure that a country's consumers are being supplied with food that is safe to eat and at the same time, the need to ensure that strict health and safety regulations are not being used as an excuse for protecting domestic producers and thus restricting international trade. The 1995 Uruguay Round led to the formation of rules in the SPS Agreement that resulted in the development of a risk analysis model that requires the use of risk management science-based measures. The SPS Agreement was formed as part of the Marrakesh Agreement establishing the World Trade Organisation in order to ensure that measures to protect the safety of food, and human, animal or plant life or health were not applied in a manner which constituted arbitrary or unjustifiable discrimination between members, or a disguised restriction to international trade, while recognizing the right of Members to adopt such measures when scientifically justified.

Critics of the SPS Agreement have argued that in spite of the impetus behind the development the SPS Agreement, some countries at times ostensibly use SPS Measures to protect their consumers while their imposition of strict regulations is actually to protect their markets from foreign competition. Thus is partly due to the fact that there is a great level of member autonomy in determining the appropriate level of SPS protection as long as it can be scientifically justified. However, where the SPS Committee has seen increasing levels of participation over the past couple of years, there has been a large discrepancy between the degree of participation between developing and developed countries.

In light of this observation, this dissertation seeks to understand why developing countries that are most vulnerable to food insecurity dilemmas have such limited participation in a committee that regulates food safety. From an economic perspective, it has been argued that food safety is a ôluxuryô good. A luxury good is one whose demand rises as income levels rise therefore greater prosperity tends to be accompanied by increased demand for more stringent SPS standards in developed countries.[4] Food safety therefore has a high income elasticity of demand and this carries that as incomes increase, as they have in developed countries, SPS Measures are tightened to eliminate ever smaller risks in life and health. Many developing countries with comparatively much smaller incomes, still face ï in contrast to developed countries, the larger risks in life and health such as hunger, starvation and malnutrition, which is why most countries tend to then focus on the two seemingly

[3] Article 12.1
[4] Jensen, M.F., Reviewing the SPS Agreement: A Developing Country Perspective, Centre for Development Research, February 2002.

more pertinent important tenets of food security ï sufficiency and nutrition, leaving the question of food safety regulations unanswered.

This dissertation has chosen to focus on the southern African region as there already seems to be construction of a regional cooperation structure on food safety; however it seems to be facing a number of challenges in successfully implementing a coherent food safety strategy. The SADC Trade Negotiation Forum (TNF) is responsible for the negotiations on a Southern Africa Free Trade Agreement (SAFTA) in terms of the SADC ôProtocol on Tradeô implemented from September 2000.[5] The TNF, in accordance with Article 16 and 17 of the Protocol in Trade recommended the establishment of a permanent SADC Coordinating Committee on SPS/TBT Measures for Agricultural Products and related Commodities (CC-SPS/TBT), as a support mechanism to the implementation of the Protocol. The aim of the CC-SPS/TBT is to provide guidance, advice, assistance and leadership in the development of SPS/TBT measures to promote trade within the region thus the the groundwork for a coherent food safety is present. [6]

This dissertation selects South Africa as a case study to further analyse the effects of the regional structure on the development of domestic institutions tasked with the responsibility of ensuring food safety. There are two reasons for selecting South Africa as a case study: firstly South Africaôs hegemonic status within the region has made it one of the key players in the implementation of SADCôs regional food safety standards and, in spite of African countriesô low participation in the WTOôs SPS Committee and the Codex Alimentarius Commission, from the SADC region, South Africa has made the most contribution to these committees. Secondly, South Africa, like many countries within the region, is a developing country but it also possesses developed country characteristics, and so although it maintains a very strong developmental objective, as an outlier in the region, South Africa also provides a dynamic which adds a very interesting component to the understanding of the African situation.

The International Food Safety Complex (IFSC)

This chapter aims to firstly, identify the existence of an IFSC and secondly justify why the study of the IFSC in Southern Africa can contribute to a better understanding of institutional overlaps. Within this analysis, the dissertation will look at the role of international institutions which act as the independent variable on the development of domestic institutions: the dependent variable. Existing literature purports that institutional overlaps normally result in cooperation within complexes, this

[5] Directorate : Food Control, Role and Responsibility of the Public Health Sector in South Africa Regarding Food Safety Control, http://www.doh.gov.za/department/foodcontrol/docs/role.html, 2002. Accessed on 13 February 2011.
[6] Ibid.

dissertation looks to further contribute to that understanding by offering further explanatory variables that purport that institutional overlap within complexes and regimes that exist within a developing region may result in cooperation due to firstly, a high need of both technical capacity and policy coordination within a developing region and secondly, the timing of the establishment of the institutions that emerge to fulfil this need.

Research Aims

The central research of this dissertation is to provide an analysis of the International Food Safety Complex (IFSC) within Southern Africa using South Africa as a case study. This is done within the context of the WTOôs SPS framework.

In pursuit of this research aim, this dissertation makes use of a three-tiered approach to the understanding of the food safety complex. Firstly, it begins by identifying the existence of and analysing the International Food Safety Complex. It then looks at food safety at the regional-level with an assessment of the implementation of the SADC-CC SPS/TBT. The analysis of influence of the international- and regional-level institution on the development of South Africa`s domestic food safety structures concludes this analysis with an understanding of the reasons behind the limited participation of developing countries in the WTO SPS Committee and its food safety standard-setting body, Codex.

Hypotheses

Based on the literature, there are three main hypotheses derived which are tested in this dissertation:

H1: There exists an International Food Safety Complex that is made up of a number of international institutions that emerged and interact within the same sphere in a cooperative context.

H2: Cooperation and consensus and not conflict and competition characterise the interlocking International Food Safety Complex in Southern Africa due to the notion of timing and the absolute need within the region.

H3: The nature of the International Food Safety Complex has had an influence on the structural development of the domestic food safety systems in Southern Africa.

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Methodology

The methodology used in this dissertation is qualitative. Qualitative methodology has been used in this dissertation for a number of reasons that make it most appropriate. A commitment to seeing the social world from the point of view of the actor is the *sine qua non* of qualitative methodology.[7] Close involvement is advocated because of the commitment to see through the eyes of one's subjects. This methodology therefore works best for this dissertation as the research involved requires communication with stakeholders of the IFSC within the SADC region. Another important reason why qualitative methodology is used in this analysis is because it also allows for a simultaneous expression of preference for a contextual understanding so that behaviour is to be understood in the context of meaning systems employed by a particular group or society.[8] Qualitative research is also deemed to be much more fluid and flexible than quantitative research in that it emphasizes discovering novel or unanticipated findings which was the case in this dissertation. This then allowed for the possibility of altering research plans in response to such serendipitous occurrences.[9] This is contrasted sharply with the quantitative methodologist's research design which has its emphasis upon more fixed measurements and a much less protracted form of fieldwork involvement.[10]

The research methods used in this kind of research need to be those which facilitate an inside view. Unstructured interviewing, life histories and participant observation are frequently mentioned. The most frequently used is óparticipant observation' which is a rather broad term which refers to not only a wide range of observational practices, but it is also used to indicate a fieldwork strategy which includes general interviewing, usually of a relatively unstructured kind, the perusal of documents, and the interviewing of key informants.[11]

This dissertation looks at the role of international institutions on the development of domestic institutions. In order to gage the development of the domestic institutions, this dissertation looks at how the IFSC has influenced the regional development of the SADC Coordinating Committee on SPS/TBT Measures as well as South Africaôs food safety complex. South Africaôs participation in the IFSC both regionally and internationally is assessed. This information is accessed through the resources such as the SPS Information Management System which allows users to track information on SPS measures that member governments have notified to the WTO. Further research is also conducted through telephonic interviews and email correspondence with members of the National Directorate: Food Control Pretoria, South Africa. The qualitative methodology used in this

[7] Brynum, A., 'The Debate about Quantitative and Qualitative Research: A Question of Method or Epistemology?' in The British Journal of Sociology, Vol. 35, No. 1, March 1984, p. 77.
[8] Ibid. p. 78.
[9] Ibid.
[10] Ibid.
[11] Ibid.

dissertation also includes visits to the *locus in quo* in order to obtain first hand information regarding the operative mechanisms of the South African food safety complex. This is done by visiting the National Directorate: Food Safety and Quality Assurance (DFSQA) located within the Department of Agriculture, Food and Fisheries; and the Department of Health that are the two key sectors responsible for food safety in South Africa. The research is also desk-based in so far as access to important documentation pertaining to the WTO and the SPS Committee relates. It relies on primary and secondary sources of information. Secondary source of data collection consists of existing literature on the subject of food safety and security in both developed and developing countries as well as literature pertaining to international institutional interaction. These include books, journal articles, reports by the World Bank and WTO working groups set aside to deal primarily with developing countriesô food security issues. The University of Witwatersrand Law, William Cullen and Wartenweiller libraries; and The South Africa Institute of International Affairsô library are also very instructive. Internet materials also play act as a very important source of information.

Theoretical Approach

This dissertation uses regime theory as its theoretical approach to unpacking the influence of the IFSC in the development of South Africa`s food safety complexes. Regime theory purports that international institutions or regimes have an influence on the behaviour of states or other international actors. This literature is pertinent to the analysis of the IFSC as it provides much needed insight to examine the normative congruence between South African legislation and the IFSC institutions. International regime theory assists in this analysis through its attempt to answer how international institutions affect the behaviour of state and non-state actors in the issue areas for which they have been created. The study of international regimes is composed of three schools of thoughts that focus on the relations between the international institutions and the state, however this dissertation focuses on the school of thought that draws from the cognitivist approach which emphasises ñknowledge dynamics, communication and identities.ò[12] This theory is relevant in that this dissertation looks at how much of an influence the WTO`s SPS Committee has had in the SADC region as this research will show that like the IFSC, the South African food safety system too has a decentralized approach to food safety regulation.

Literature Review

Current theoretical contributions do not consider the role of international institutions in developing contexts. Indeed, it appears that the high need for capacity-development is a factor that contributes to

[12] Hasenclever. A, Mayer. P, and Rittberger. V.: Theories of International Regimes, Cambridge University Press, United Kingdom, 2004, p. 136.

the cooperative nature of an interlocking institution. The purpose of this dissertation is to build on the existing contributions to the institutional overlaps and interplay literature through highlighting the effects that a dire need for technical capacity within a developing region may have on institutional interaction through looking at the IFSC. This dissertation does not seek to discredit the existing literature that exists primarily in the school of institutional interaction theory, but aims rather to provide supporting evidence that can contribute to the understanding of cooperation in institutional interaction. The analytical framework is based on the current literature of food safety standards and the literature on institutional interplay and overlap. The proliferation of institutions within Southern Africa has resulted in cooperation as opposed to competition and conflict. This contribution aims to fill a gap in the literature that is required to provide an effective explanation of firstly the existence of the IFSC and secondly its effects in Southern Africa.

Two sorts of literature inform the development of the hypotheses: the existing literature on the food safety and the literature on the institutional interactions within a situational overlap. This dissertation requires an engagement with both literatures as they equally offer insight into an analysis of the IFSC within the Southern African region. The literature on food safety focuses on gaining an understanding of the institutions that play a role within the complex, their origins and relationships. This is necessary in order to gain a full understanding of the participants within the IFSC. The literature on institutional interplay and interaction provides insight on the dynamics between overlapping institutions that overlap within a particular complex. This is important to allow for a full analysis of the IFSC as well as provide insight to the dynamics that are prevalent within a developing country region. An in depth understanding of the dynamics that prevail within institutional overlaps in different societal areas provide a foundation necessary to forge out the existence of an IFSC and the dynamics that are at play within the Southern African context. The purpose in using these literatures is to identify a gap that has not yet been filled within the food safety literature as well as build a richer theory of institutional interaction.

Food Safety and Developing Countries Literature

Much has been written about the relevance of SPS Measures within the WTO. This dissertation focuses on global food safety as the foundation of this research. An in depth analysis into the current literature on SPS Measures such as the Food and Agriculture Organisationôs Resource Manual on Multilateral Trade Negotiations on Agriculture. It assists this dissertation by outlining the history of the development of the SPS Agreement dating back to its earliest conceptions within the international multilateral arena.[13] It provides a thorough background of the SPS Agreement which lies in Article

[13] Food and Agriculture Organisation, Multilateral Trade Negotiations on Agriculture: A Resource Manual, http://www.fao.org/docrep/003/x7351e/x7351e00.htm. Accessed on 13 February 2011.

XX(b) in the General Agreement on Trade and Tarriffs (GATT) which permits countries to restrict imports to protect human, animal or plant life or health. Griffin outlines key events that lead up to the final draft of the SPS Agreement dating back to the 1986 Punta del Este Declaration which launched the Uruguay Round and specifically called for increased disciplines on SPS measures.[14] Substantial agreement was reached on a draft text by the Working Group on Sanitary and Phytosanitary Regulations in November 1990 but the final agreement was reached in 1991 following further modification in the ñDunkel Textò which then entered into force for most WTO members in 1995.[15]

A look at the SPS Agreement today in its current form is imperative to this study therefore this research also makes use of Scottôs commentary on the SPS Agreement which considers some of the issues that occur within international arena. The author writes about conflictual issues that arise when compliance with the SPS Agreement seems to contradict the WTO's Technical Barriers to Trade Agreement as well as take a look at the ability of public health barriers to trade and to play a part in aiding development in third world countries and not only hampering it.[16] This dissertation builds on this literature and looks at the research that has already looked at the costs and implications of the SPS Measures in developing countries within the global market because of the complexity and the different national attitudes toward heath and sanitation. This dissertation looks at the relationship between the WTO as an international institution in relation to the implementation of its rules and regulations within member statesô domestic national agendas. It is argued that food safety regulations within the African context are dictated by the WTO which serves the interests of developed countries and so act as a different type of trade protectionist mechanism. The literature of that nature is dominated mostly by scholars in favour of developing countries who argue against food safety regulations and state that SPS Measures cause trade distortions. According to scholars such as Thamarajakshi, after agreeing to WTO Agreements, developing countries have been disappointed to discover several asymmetries and inequities inherent in the agreements which were not conducive to their trade interests.[17] This literature informs the discussion that the SPS Agreement coupled with the Agreement on Technical Barriers to Trade (TBT) seem to have become instrumental in selectively warding off imports from developing countries by the advanced countries prescribing higher standards than those recognised by international bodies. In similar literature of this nature, Jaiswal writes that the benefit of liberalisation could be undermined by the protectionist use of SPS measures by some countries[18]. In a working paper by Shaffaeddin, the former head of Macroeconomics and Development Policies Branch, UNCTAD, he writes that an example of the negative effect of SPS measures can be seen in African countries that are estimated to have lost $670 million in agricultural

[14] Ibid.
[15] Griffin. R., History of the Development of the SPS Agreement, http://www.fao.org/docrep/003/x7354e/x7354e01.htm
[16] Scott. J.: The WTO Agreement on Sanitary and Phytosanitary Measures: A Commentary, Oxford University Press, Oxford, 2009.
[17] Thamarajakshi. R., 'Doha Declaration and Agriculture in Developing Countries' in Economic and Political Weekly, Vol. 37, No. 1, January 2002.
[18] Jaiswal. A.K., 'WTO Agreement on SPS: Strategic Implications' in Economic and Political Weekly,Vol. 38, No. 45, November 2003.

exports because of the higher EU standard for aflatoxin as compared to the Codex Alimentarius standard. In his articles he shows that the burden of cost of compliance is entirely on the exporters despite the fact that their capacity for the compliance is limited.[19] He further indicates that, in fact, the literature often disregards the cost of loss of exports, or rejection of products at the border of an importing country. Authors such as Jensen also argue that some especially least developed countries are excessively burdened by the implementation costs of the SPS Agreement. In an article published by the World Bank and written by Otsuki, Wilson and Sewadeh, the paper provides a quantitative analysis on the extent to which the increased food safety standards have a negative impact on African imports and this assists in thoroughly assessing the impact of the global food safety complex in Africa.[20] The World Bank has published widely on this topic.[21] In the discussion of the participation of African countries in the food safety conversation, this literature provides the foundations for understanding the impact of food safety regulations on developing countries and the cost implications of these regulations which contribute to an understanding of why developing countries do not seem to be participating in the IFSC.

This study specifically looks at the SADC regionôs participation within the global food safety complex through looking at their participation in the international communityôs WTO SPS complex and regionally, their contribution to the SADC-CC. As such, this study hopes to provide additional insight into the lack of participation by developed countries in global food safety complex. Although numerous studies have identified the shortfalls of the SPS Measures in relation to developing countries, little analytical attention has been paid and contributed to an in depth analysis on the causes and reasons for the challenges faced by a developing country through looking at the way the countryôs domestic institutions have been affected by the state of the corresponding international institutions that are meant to assist in the attainment of the international food safety standards alongside an assessment of the regional framework and its influences on national food safety.

This research is important in understanding the reasons why nations that carry food security at the top of their agenda seem to neglect a tenet that is so intricately interlinked to it as per the WHO definition of food security. This dissertation addresses this by using South Africa as a case study in light of its hegemonic status which would presumably provide the avenue to contribute largely to international discussions on food safety in the SPS Committee yet South Africa still faces many challenges. The analytic focus on South Africa and the region also enables another contribution to this body of work

[19] Shaffaeddin, M., Who Does Bear the Costs of Compliance with Sanitary and Phytosanitary Measures in Poor Countries?, MPRA, http://mpra.ub.uni-muenchen.de/6646/, 2007.

[20] Otsuki. T, Wilson, J.S., and Sewadeh, M., Saving two in a billion: quantifying the trade effect of European food safety standards on African exports, The World Bank.

[21] Wilson, J.S, Otsuki, T, Global Trade and Food Safety: Winners and Losers in a Fragmented System, The World Bank

to provide various explanations as to African countriesô seeming apathy with regards to food safety. Although numerous studies have identified the causes of African countriesô lack of participation and the results thereof in terms of reduced trade, little analytical attention has been paid to why food safety does not seem to rank as highly on African countriesô national agenda.

Institutional Interplay and Overlap Literature

The study of international institutions has until recently focused primarily on them as stand-alone entities. It has looked at their establishment, maintenance and effectiveness and analysed them in isolation of each other. This research is based on the assumption that institutional forces exogenous to particular international institutions are not significant.[22] Edged by the pressure to manage the process of globalisation beyond the nation-state in various issue areas, this premise is being challenged by the highly interdependent nature and density of the ever-growing array of international institutions. International institutions can be located at all levels - the global, interregional and regional policy level of the international system and this is commonly referred to as the multi-level system of global governance.[23] International institutions are defined in this dissertation as ñpersistent and connected set of formal and informal rules that prescribe behavioural roles, constrain activity, and shape expectations.ò[24] Institutional interplay refers to situations when ñthe development, operation, effectiveness or broad consequences of one institution are significantly affected by the rules and programs of another.ò[25]

Recently it has become popular to note the extent to which everything and everyone is connected. Building on Stanley Milgramôs famous study that found that it generally takes only six steps to connect most actors, Duncan Watts labelled the contemporary period as the ñconnected ageò where nearly every element of society, the economy, and life is connected, generating interactive dynamics that lead to innovation and change. The number, level of detail and subject matter of international cooperative agreements has grown exponentially in recent decades, accelerated in large part by the end of the cold war. In almost all areas, it seems that every policy issue is nowadays the subject of an international complex, and often of more than one international complex. As the number of international regimes has increased, this has contributed to the proliferation of overlap across agreements, competition within international obligations, and confusion regarding what international and bilateral obligations have the final say over an issue.[26] However, research in international

[22] Loewen, H., Towards a Dynamic Model of the Interplay Between International Institutions, GIGA Research Program: Transformation in the Process of Globalization, http://www.giga-hamburg.de/dl/download.php?d=/content/publikationen/pdf/wp17_loewen.pdf. Accessed on 13February 2011.
[23] Ibid.
[24] Ibid. p.7.
[25] Ibid. p. 11
[26] Alter, K. J, and Meunier, S., 'The Politics of International Regime Complexity' in Perspectives on Politics, Vol. 7, No. 1, p. 13.

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relations has only randomly investigated the interaction of international institutions and there exist only a few studies that try to conceptualize the interaction of whole regimes, organizations, or overlap in policy fields.[27]

Brosig pinpoints in his article The Multi-Actor Game of Peacekeeping in Africa that there are emerging patterns of inter-organizational cooperation in peacekeeping missions in Africa ï between the United Nations, the African Union and the European Union. He writes that the overwhelming majority of current operations build on some kind of inter-organizational arrangements and that at least three forms of cooperation have emerged on the continent, of which sequential, parallel and integrated deployment of troops are the dominant forms. [28] The article explains the selection of cooperation types by international organizations, by exploring the conditions that trigger the selection of the cooperation taking place. He highlights that following the logic of rational institutionalism; at least two basic conjectures for cooperation can be formulated. Firstly, he writes that cooperation is most likely to appear when institutions can realize a certain benefit from interaction. In the case of international peacekeeping, capacity limits and symptoms of overstretch affect all major IOs, and thus cooperation is attractive, as it allows actors to pool resources and realize synergy effects. Second, rational decision-making is based on individual actor preferences. In the context of peacekeeping he assumes that international organisations have developed certain interests and doctrines guiding their peacekeeping ï on which decisions for cooperation are based. However, the formulation of conjectures for cooperation must recognize different types of cooperation in order to explore conditions for sequential, parallel and integrated missions.[29] What is interesting is Brosigôs analysis into the reasons for cooperation within peacekeeping in Africa, he states that, ñCooperation is driven not only by normative obligations alone but also by the capacity limits of each organization. Peacekeeping missions conducted by international organisations are increasingly characterized by symptoms of overstretch and underdeveloped capacity to react adequately and sustainably to conflicts.ò[30] Both of his arguments feed into the argument for cooperation as highlighted in this dissertation. Brosig also lends a very similar analysis on cooperation between institutions in his paper Governance between International Institutions: Analysing Interaction modes between the EU, the Council of Europe and the OSCE. He writes that in a growing number of policy areas international organizations can no longer work in complete isolation from each other. Increasingly institutions rely on coordinated interaction with other organizations active in the same policy field, not only to prevent the negative effects of ñforum shoppingò by member states, but also for pooling competencies and resources and as a consequence of institutional and policy overlap. However, he continues that little is

[27] Brosig, M., 'Governance between international institutions: Analysing interaction modes between the EU, the European Council and OSCE', in Galbreath & Gebhardt (ed.), Cooperation or conflict? Problematizing overlap in Europe. London, Ashgate, 2010, pp. 29-58.
[28] Brosig, M., 'The Multi-Actor Game of Peacekeeping in Africa' in International Peacekeeping, Vol.17, No. 3, June 2010, p. 330.
[29] Ibid. p. 330.
[30] Ibid. p. 331.

known about those conditions that bear responsibility for emerging interaction modes between international institutions and therefore his article analyses emerging forms of cooperation, division of labour and competition between international organizations. This article inquires about the causal conditions for these three interaction modes and lends itself in further understanding of the cooperation between institutions that is analysed within the paper.

Gehring and Oberthur also offer further insight on overlapping institution dynamics. They develop a conceptual framework for the systematic analysis of the interaction between international institutions as a first step towards building a theory of international interaction. It examines how international institutions may exert causal influence on each otherôs development and effectiveness and suggests that four general causal mechanisms can elucidate the distinct routes through which influence travels from one institution to another. Institutional interaction can thus rely on transfer of knowledge, commitments established under an institution, behavioural effects of an institution, and functional linkage of the ultimate governance targets of the institutions involved. The article also puts forward hypotheses about the likely effects of specific types of institutional interaction for governance within the international system. The article develops a conceptual framework for the systematic analysis of the interaction of international institutions as a first step towards building a theory of institutional interaction.[31]

Hofmann also contributes to this literature as she highlights that in this situation, the two overlapping institutions have had a particularly tense relationship from the beginning.[32] Despite the UKôs efforts to present ESDP as a European effort to strengthen the Alliance despite the significant membership overlap, France, and other states, have not hid their ambition for ESDP to become Europeôs primary security actor. This particular article is important because it highlights the ñturf warsò dynamic which is relevant to the IFSC in Southern Africa. This concerns the geographic scope of the organizations and, their respective mandate in regards to the inclusion of the civilian aspect of security, and resources earmarked for either ESDP, NATO, or both. [33]

Contribution

The aim of this dissertation is to show the way in which the international system has affected the development of domestic institutions within the food safety complex. This dissertation firstly seeks to examine the interaction between the various actors of the IFSC in Southern Africa using Gehring and

[31] Gehring, T., 'The Causal Mechanisms of Interaction Between International Institutions' in European Journal of International Relations, Vol. 15, No. 1, March 2009, p. 125-156.
[32] Hoffman, S.C., Institutional Overlap in the Realm of Security: The Case of NATO and ESDP, http://www.princeton.edu/~smeunier/HofmannOverlap.pdf.
[33] Ibid.

Faudeôs paper, Division of Labour within Institutional Complexes and the Evolution of Interlocking Structures of International Governance: The Complex of Trade and the Environment, as the outline to critically analyse the IFSC.[34] These authors suggest that interlocking structures of international institutions related to a similar issue area can emerge but that the roles that are taken up are defined through institutional competition.[35] Through rooting their analysis in the organisational ecology literature, Gehring and Faude contend that ñ..competition, not-coexistence or symbiosis constitutes the main characteristic of populations and organisations, because organisations compete over scarce resources.ò[36] This dissertation, however, will show that in so far as Gehring and Faudeôs paper well outlines the nature of interlocking institutions, the food safety regime in Southern Africa can be seen to be governed by an interlocking institution that has arisen within a cooperative environment that can be attributed to the environment within which it exists. Whilst this dissertation does not contradict the fact that international institutions divide labour in an issue area and establish functional niches, it contends that in the context of the IFSC and its role in promoting food safety policy advancement in Southern Africa, interlocking structures and niche functions can emerge through cooperation and coexistence. [37] The interlocking institutions that govern the IFSC do not appear to be in conflict, but rather, they appear to be addressing global food safety governance through consensus and cooperation. In spite of the lack of competition amongst the relevant international institutions, the IFSC in its approach to Southern Africa exhibits an apparent division of labour that seems to have assigned clearly delimited functional niches to the component institutions of this complex and created a coherent interlocking governance structure. Whilst the theory put forward argues that the emergence of interlocking structures is driven by inter-institution competition over regulatory dominance and over resources, the dissertation highlights that the IFSC displays different developmental dynamics in the context of Southern Africa. Integral to the cooperation that is prevalent within the IFSC in Southern Africa are two different components: firstly, timing in the emergence of the IFSC and secondly, the demand that exists in Africa for technical capacity assistance in food safety. Indeed, the component institutions within the IFSC have emerged over a long period of time and appear to have been created with the explicit idea of fulfilling a specific niche in international food safety governance as and when it was needed. In the context of Africa, many nations do not have fully functioning food safety systems and require significant technical and financial assistance from developed countries. **The hypothesis is that the IFSC in Southern Africa sees cooperation between the participating institutions because of the notion of timing and the high demand within the region to meet the food safety standards as regulated by the WTO SPS committee.**

[34] Faude. B, and Gehring. T, 'Institutional Ecology and the Evolution of Broader Structures of International Governance. The Trade and Environment.' Paper presented at the annual meeting of the Theory vs. Policy? Connecting Scholars and Practitioners, New Orleans Hilton Riverside Hotel, The Loews New Orleans Hotel, New Orleans, http://www.allacademic.com/meta/p416842_index.html.

[35] Ibid.
[36] Ibid. p. 5.
[37] Ibid. p. 5.

Chapter Outline

This dissertation is divided into four chapters. The first chapter institutes an introduction to the research; it provides a statement of research question and maps out the scope of the dissertation. The aim and rationale of the research, the literature review, the hypotheses behind the existence and cooperative endeavor of the IFSC in Southern Africa are all covered in this chapter. The analytical framework looks particularly at the question of competition versus cooperation within this complex which serves as a contribution towards a better understanding of institutional overlaps. This chapter is relevant at the start of this dissertation as it outlines and lays the foundation of the research and circumscribes the research within definite limits.

The second chapter looks at the IFSC and identifies the institutions that participate within it. It looks specifically at the roles and functions of each institution and examines the overlapping nature of these institutions and their interplay within the IFSC. This chapter will draw primarily on the theory established by Gehring and Faude.

Chapter three will then look at South Africa within the IFSC and the impact that the IFSC has had on the South African food safety. It will afford an analysis of the influence of the IFSC within Southern African and South Africa. The chapter will outline the domestic institutions that are involved in food safety in South Africa, show the relationship between these institutions and their international counterparts in the IFSC and indicate how this relationship has influenced the relationship between the different national government departments involved in food safety domestically. In this chapter, information obtained from interviews and other correspondence with officials from government departments and other principal players involved in the South African food safety complex shall be used to provide a clear coherent explanation of the role of each institution in food safety.

Chapter four is the final section of this research. It will provide the trade ramifications of the existence of the IFSC in Southern Africa as well as provide a conclusion on the insight gained from the research.

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Interlocking Structures of International Governance within the IFSC

This chapter demonstrates the existence of the IFSC as a result of the interlocking structure that has formed through the overlap of the international institutions involved in food safety. Each institution has a specific role and function that it plays within the IFSC. This chapter analyses the IFSC in Southern Africa and considers how institutional overlap and interlocking governance structures affect the uptake of food safety norms in the region. It will look at how the IFSC in its current form has influenced the normative development of the domestic food safety system in South Africa. Consideration is given to how this institutional complex interacts and why cooperation appears to be more prevalent than competition between them. The notion of competition among international institutions as the force behind the formation of complex dynamics that lead to functional specialisation of institutions and their selection of functional niches is challenged. Whilst there is little contention with the idea that functional specialisation produces a division of labour among the competent institutions, this dissertation illustrates that a precondition for this occurring does not have to be competition.[38]

The twentieth century was an important period of international institution building particularly with the advent of the post-War institutional order embodied by the United Nations and the Bretton Woods institutions.[39] Since then a proliferation of international institutions has occurred with much of this institutional architecture seeking to address new types of transnational and global issues. The growth of international institutions has created numerous instances of institutional overlap.[40] The growing trend of the rising density of international institutions is making it more difficult to isolate and deconstruct individual international institutions for study.[41] Increasingly, the international community has begun to see institutions rely on coordinated interaction with other organizations active in the same policy field, not only in an effort to prevent the negative effects of ñforum shoppingò by member states, but also for pooling competencies and resources and as a consequence of institutional and policy overlap.[42]

[38] Faude. B, and Gehring. T., 'Institutional Ecology and the Evolution of Broader Structures of International Governance. The Trade and Environment.' Paper presented at the annual meeting of the Theory vs. Policy? Connecting Scholars and Practitioners, New Orleans Hilton Riverside Hotel, The Loews New Orleans Hotel, New Orleans, http://www.allacademic.com/meta/p416842_index.html.

[39] Margulis. M E., International (Re)Organisation : The Emergence of the Global Food Security Complex, Alliance for Governance Research and Analysis (AGORA) Workshop Paper Series, Griffiths University, 2011.

[40] Shanks, C., *et al.*, 'Inertia and Change in the Constellation of International Governmental Organizations' in International Organization,Vol. 50, No. 4, pp. 593-627.

[41] Raustiala, K, and Victor, D., 'The Regime Complex for Plant Genetic Resources' in International Organisation, Vol. 58, 2004, pp. 278.

[42] Brosig, M., 'Governance between international institutions: Analysing interaction modes between the EU, the European Council and OSCE', in Galbreath & Gebhardt (ed.), Cooperation or conflict? Problematizing overlap in Europe. London, Ashgate, 2010.

Food safety in Southern Africa is an area that requires a lot of attention and support due to its underdeveloped technical capacity and policy coordination. This reduces the opportunity for competition because there so much need and a high demand to pool resources and competencies within this area. Timing also matters in determining cooperation or competition. As detailed in subsequent sections of this chapter, the relevant institutions in the IFSC emerged at different times and appear to have been formed as necessity dictated. This means that functional niches were established and understood in the process of forming institutions within the IFSC instead of institutions competing against each other to carve out space. Such an interlocking structure has led to some specific ramifications for advancing food safety in Southern Africa which have both been supportive and created challenges. These will be described in the case study outlined in chapter three but first it is necessary to unpack the IFSC in Southern Africa.

The Meta-Structure of the IFSC in Southern Africa

In an attempt to establish that an interlocking governance structure for food safety exists, it is imperative that the meta-structure is different from or comprises of more than the aggregate of the governance structures of the component institutions. The structural elements of an institutional complex should not be reducible to its component institutions. These institutions, however, remain an integral part of the complex themselves and do not lose their separate existence when becoming part of a larger complex. The new structure that evolves from repeated interaction among the component institutions of an institutional complex should reflect emergent system properties that simply cannot be reduced to the component institutions.

For the purposes of conceptual clarity, it is important to differentiate between cooperation and competition in interlocking institution contexts. Competition suggests carving out policy space and seeking to establish relevance between actors that have a similar agenda and purpose. In competition contexts, actors vie to establish who is more relevant in addressing a particular policy problem. Concerns over jurisdictional overlap are met through attempts to assert authority and competence. The role of policing in Kosovo is a prime example of competition between interlocking international institutions where the UN competed with NATO and the EU in this regard.[43] In contrast, cooperation suggests that interlocking institutions accept that each maintain a particular competency in a policy space, and come together to establish common goals and activities to promote policy advancement. Through establishing cooperative hubs and clearly establishing areas of responsibility, jurisdictional overlap and competition is avoided.

[43] Ibid.

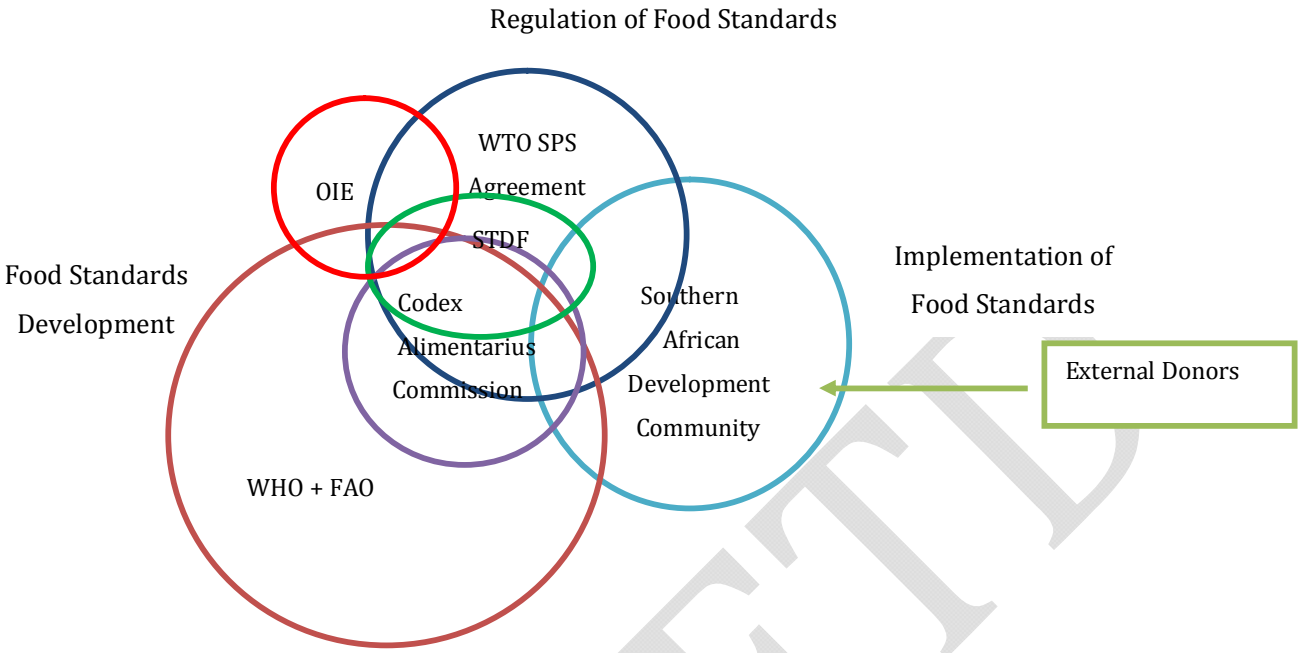
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The governance of all trade restrictions was initially fully assigned to the General Agreement on Tariffs and Trade (GATT). The completion of the Uruguay Round of trade negotiations saw the emergence of the WTO. The WTO supplemented the GATT governed multilateral trading system with several additional agreements such as the Agreement on Sanitary and Phytosanitary Measures which prohibits the use of domestic regulation of particular foodstuffs, feed, seeds as well as living animals and plants as non-tariff trade barriers unless the restriction is based upon scientific risk assessment or upon a product-specific international agreement or standard. Although the WTO is at the heart of international food safety governance, the Codex Alimentarius Commission (and its parent, the Food and Agriculture Organization, FAO), World Animal Health Organization (OIE), and World Health Organization (WHO), External Donors and SADC also maintain competency in this area. These institutions all play a role in the governance of food safety within Southern Africa. The meta-structure that governs the food safety complex in this region is the interlocking structure that has allowed different actors to adapt and construct their own functional niches.

Figure 1 highlights the relationship of the international institutions in the IFSC as it relates to Southern Africa. Whilst each plays a specific role in global food safety governance they overlap in cooperative endeavours that reinforce institutional roles and responsibilities in food safety regulation. Such a complex has emerged as a greater understanding that food safety regulation touches upon on multiple different policy areas. Trade, law, risk assessment, scientific cooperation, human health, animal health, plant health are all aspects that feed into a food safety regulatory framework. In the IFSC context, each complex has responsibility in particular aspects.

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Figure 1: Food Safety Interlocking Governance Structure in Southern Africa



Roles and Functions of the Institutions within the Food Safety Interlocking Governance Structure in Southern Africa

The role of each of these component institutions can be separated into three categories: Regulation of Food Standards, Development of Food Standards, and Implementation of Food Standards. These institutions overlap and are interlocked forming the IFSC. Each reinforces the other in the overarching pursuit of effective food safety policy and governance. The SPS Committee, the OIE, the Codex Alimentarius, the FAO, WHO, SADC, Standards Trade Development Facility (STDF) and external bilateral donors such as the EU each fulfil a specific function in the IFSC.

Regulation of Food Standards

Central to a good functioning of the IFSC is maintaining mechanisms that regulate the development and implementation of food standards and ensure compliance. Given that trade is a central reason for having an IFSC, the WTO plays a central role in the regulation of it. In particular, the WTO dispute settlement system resolves many food related trade disputes and has become the defacto enforcer of international standards. Indeed, WTO principles such as non-discrimination, most favoured nation etc. act as guidelines on how food standards can be developed and implemented. The WTO agreement that deals primarily with trade related food safety matters is the SPS Agreement.

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SPS Agreement

The Punta del Este Declaration launched the Uruguay Round and specifically called for increased disciplines on SPS measures. Substantial agreement was the effectively reached on a draft text by the Working Group on Sanitary and Phytosanitary Regulations in November 1990. The final agreement however was only reached in 1991 following further modification in the ñDunkel Textò which then entered into force for most WTO Members in 1995.[44]

The SPS Agreement embodies a number of key provisions that are meant to guide member states in the regulation of food. SPS measures are defined within Annex A of the Agreement as ñthose aimed at protecting animal or plant life or health arising from food-borne risks, pests, diseases, disease-carrying organisms, additives, contaminants, toxins or disease-causing organisms in food.ò At its heart, the SPS Agreement seeks to establish a balance between the sovereign rights of Member States to provide a level of health protection deemed necessary but at the same time ensure these measures are not used as disguised protectionism in international trade. As a result, the SPS Agreement provides that states can apply food safety measures only if they do not arbitrarily or unjustifiably discriminate against other countries exports.[45] In the event that a food safety measure does prevent the trade in goods, it must be based on a risk assessment where sufficient scientific evidence has been presented to justify the measure, and have the least trade restrictive effect.[46]

In addition to stipulating when a food safety measure can restrict trade, the SPS Agreement also seeks to promote the harmonisation of approaches to food safety regulation. In this vein, the SPS Agreement provides that member states are required to base their food safety standards on international standards, guidelines or recommendations, where they exist coming out of the IPPC, Codex Alimentarius and the OIE.[47] To do so, ensures that member state regulations are consistent with WTO rules and enjoy freedom from judicial contestability in WTO dispute settlement.[48] In the event that an international standard does not exist, a member state may take action on an identified risk as long as it is supported by sufficient scientific evidence.[49] By deferring to international standards, the WTO acknowledges the technical expertise that exists within the international standard-setting organisations for dealing with food safety.

[44] Griffin. R., 'History of the Development of the SPS Agreement', http://www.fao.org/docrep/003/x7354e/x7354e01.htm. Accessed on 13 February 2011.
[45] World Trade Organisation: Sanitary and Phytosanitary Measures: Text of the Agreement http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm, Article 2.3 & 5.5.
[46] Ibid. SPS Article 2.2, 3.3, 5.1 & 5.6.
[47] Ibid. SPS Article 3.1.
[48] Ibid. SPS Article 3.2.
[49] Ibid. SPS Article 3.3.

So, why should the WTO have an impact on the development of a food safety complex in South Africa? Despite deferring to such institutions as the Codex Alimentarius and the OIE for standards development, the SPS Agreement requires food safety measures to be notified and justified to member states.[50] Notifications are considered a key transparency mechanism that seeks to make trade and regulatory authorities aware of new legislation emerging in member state markets. Having such a requirement allows for member states affected by a proposed food safety measure to object and attempts to resolve any inconsistencies prior to trade actually being inhibited. The SPS Committee is the forum where these issues are notified, debated and where informal disagreement arises, resolved between member states. The SPS Committee monitors and reviews the food safety activities of Member States, promotes harmonisation and coordinates with international standard setting bodies like the Codex Alimentarius.[51] In contexts, where disagreements arise between member states, the WTO also provides recourse to a dispute settlement system that will provide an arbitrated resolution. So, the WTO and particularly the SPS Agreement regulates the use of food standards in the international system placing at the centre of the interlocking structure of the IFSC.

Food Standards Development

Developing internationally recognized and consistent standards for production, processing and storage of food is a key function of the IFSC. There are a number of institutions that play an important role in this area such as the WHO, FAO, the Codex, and the OIE. These institutions tend to formulate food related standards through expert consensus and relying heavily on science and scientific evidence to justify establishing particular international norms. As a result, they tend to be engaged in technical matters, utilizing scientific evidence to develop norms around production, processing and storage requirements. Despite this, there exist a number of different institutions engaged in standards development, all appear to maintain a specific competence in an aspect of food standards development not competing with each other, rather cooperating.

<u>World Health Organisation + Food and Agriculture Organization</u>

The extent to which the WHO and FAO participate in the IFSC is through a realization that food safety issues are important components of promoting public health (WHO) and food security (FAO), especially as countries participate to a greater extent in the trade of food stuffs and agricultural products.

[50] Ibid. SPS Article 7 and Annex B.
[51] Ibid. SPS Article 12.4

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WHO

WHO has a specific mandate for the protection of public health. Its mission is ôthe attainment by all people of the highest possible level of healthô.[52] WHOôs role in food safety is to reduce the burden of food borne illness by advising and assisting Member States to reduce exposure to unacceptable levels of chemicals or microorganisms in food.[53]

The 1948 WHO Constitution includes specific charges relating to food safety:

- assist governments in strengthening health services relating to food safety;
- promote improved nutrition, sanitation and other aspects of environmental hygiene;
- develop international standards for food; and,
- assist in developing informed public opinion among all peoples on matters of food safety.

In so far as food borne illness can be caused by microbiological, chemical or physical hazards, the WHOôs interest in food safety is primarily because food borne illness can result in a number of acute or lifelong diseases affecting human health. There is also mounting concern about new technologies and especially the introduction of genetically modified organisms into the food supply. The Fifty-third World Health Assembly (May, 2000) adopted a resolution calling upon the World Health Organization (WHO) and its Member States to recognize food safety as an essential public health function. The resolution also called on WHO to develop a Global Strategy for reducing the burden of food borne disease.

WHO has been involved in food safety for over five decades. Many WHO activities in this area are carried out in close collaboration with FAO. In May 1963, the Sixteenth World Health Assembly approved the establishment of the Joint FAO/WHO Food Standards Programme, with the Codex as its principal organ. The participation of WHO was required because of its mandate for public health and food safety. WHOôs central role is a normative one and includes international standard setting and the facilitation of risk assessments. WHO has promoted the concept of risk analysis as a framework for the management of food safety. The main focus is the development of methods for quantitative microbiological and chemical risk assessment, foodborne disease surveillance and assessment of the safety of the products of genetic engineering. WHO also provides technical assistance to governments, through its regional offices, to ensure a safe food supply for their populations. As a part of its mandate to support capacity building in Member States, WHO provides training in food sanitation in community-based programmes and the Healthy Market Initiatives. In collaboration with international, regional and national agencies, it provides training in risk analysis and other aspects of food safety. WHO assists national governments in developing and implementing food safety

[52] World Health Organisation: Declaration of Alma-Ata, http://www.who.int/hpr/NPH/docs/declaration_almaata.pdf. Accessed on 13 February 2011.
[53] World Health Organisation: WHO Global Strategy for Food Safety : Safer Food for Safer Health , http://www.who.int/foodsafety/publications/general/en/strategy_en.pdf. Accessed on 13 February 2011.

programmes and food legislation and provides support for setting up information systems for monitoring food contamination and surveying foodborne disease.

FAO

The Food and Agriculture Organization (FAO) is the main United Nations agency specializing in all aspects of food quality and safety, and in all the different stages of food production, harvest, post-harvest handling, storage, transport, processing and distribution.[54] FAO's Food Quality and Standards Service (AGNS) is committed to the enhancement of food safety and quality along the food chain at international, regional and national levels, with the aim of preventing food-borne diseases, protecting consumers and promoting fair practices in the food trade. [55] The key of the food chain approach is to strengthen each and every link in the complex process of food reaching the consumer. Its implementation requires an enabling and rules-based policy and regulatory environment at both national and international levels, as well as the establishment of food control systems and programmes throughout the food chain at national and local levels.[56] The ultimate aim of the food chain approach, incorporating these improved practices, is to increase the transparency of the food chain so national and global food crises can be prevented rather than treated. [57]

To contribute to the efforts to reduce this adverse impact of food safety emergencies on global food security and public health, and at the request of its members, The Food and Agriculture Organization of the United Nations (FAO) has established an Emergency Prevention System for Food Safety (EMPRES Food Safety). EMPRES Food Safety will complement and enhance FAOôs ongoing work in food safety, as well as in animal health and plant health emergencies.

Codex Alimentarius Commission

The WHO and the FAO have pooled financial resources to develop a cooperative institution that establishes international standards and debate common issues pertaining to food safety. The Codex Alimentarius Commission is governed by its own international agreement and operates at arms length of both the WHO and FAO, however, continues to be financially reliant on both institutions.

The Codex Alimentarius Commission (CAC) is an intergovernmental body to implement the Joint FAO/WHO Food Standards Programme which was established by an FAO Conference resolution in 1961 and a World Health Assembly resolution, WHA 16.42, in 1963. Its principle objective is to protect the health of consumers and to facilitate the trade of food by setting international standards on

[54] Food and Agriculture Organisation: Food Safety Along the Food Chain, http://www.fao.org/ag/agn/agns/foodsafety_en.asp. Accessed on 13 February 2011.
[55] Food and Agriculture Organisation: EMPRES Food Safety: Emergency Prevention System for Food Safety Strategic Plan, http://www.fao.org/ag/agn/agns/. Accessed on 13 February 2011.
[56] Food and Agriculture Organisation: Food Safety Along the Food Chain, http://www.fao.org/ag/agn/agns/foodsafety_en.asp. Accessed on 13 February 2011.
[57] Ibid.

foods (i.e. Codex Standards) and other texts which can be recommended to governments for acceptance. [58] The FAO/WHO Project and Fund for Enhanced Participation in Codex (Codex Trust Fund) was launched in 2003. The main objective of Codex Trust Fund is to help developing countries and those with economies in transition to enhance their level of effective participation in the Codex.[59]
The main purpose of the Codex is to coordinate and lead the development of food standards within the international framework, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme. The main purpose of this Programme is protecting health of the consumers and ensuring fair practices in food trade, and promoting coordination of all food standards work undertaken by international governmental and non-governmental organizations. The Codex brings together technical scientific experts representing states to discuss, debate and decide international standards pertaining to food quality, and safety. Codex standards hold weight in global food safety governance and are viewed as beyond judicial contestability in the WTO dispute settlement system unless new scientific information emerges suggesting a risk.

World Animal Health Organization (OIE)

The role of the OIE in the IFSC appears tangential in the sense that its primary function is to develop international standards for animal health and welfare and to combat the spread of diseases. However, its remit does touch on food safety efforts through ensuring that animal products are not exposed or contain harmful pathogens such as Bovine Spongiform Encephalopathy (BSE) or Foot and Mouth Disease (FMD) which can have deadly effects on human health and inhibit the availability of safe food.
So, in the context of the IFSC, the OIE plays a role through setting standards that pertain to controlling and eradicating deadly pathogens in animals that can be transferred to humans. It is considered one of the three sister organisations associated with the WTO SPS Agreement and whose international standards are considered gold. The OIE, also plays an important role in providing funding to the STDF along with the WTO, Codex Alimentarius, FAO and WHO.

Implementation of Food Standards

The final aspect of the IFSC is the implementation of food standards. Here there exist a number of institutions and actors involved. Typically the IFSC integrates regional institutions with an appropriate mandate to coordinate and harmonize policies between states in a specific geographic area. In addition, institutions that focus on building technical capacity at the local level to ensure that food standards are implemented effectively and consistently with international standards are also

[58] World Health Organisation, 'Joint FAO/WHO Food Standards Programme (Codex Alimentarius)', http://www.who.int/foodsafety/codex/en/. Accessed on 13 February 2011.
[59] Ibid.

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included. In the context of Southern Africa, SADC, the STDF and bilateral donors like the EU are the most engaged in implementing food safety standards. In southern Africa, these institutions and actors provide funding and training to build technical capacity. This involves instituting training programs that monitor and evaluate food safety. The intent is to establish a sustainable food safety system locally that can then feedback into the regulatory and standards development aspects of the IFSC.

Southern African Development Community

Southern Africa is comprised of 15 countries that are all members of a regional multilateral agreement, Southern African Development Community (SADC) that seeks to coordinate SPS issues in the region.[60] SADC has been in existence since 1980, when it was formed as a loose alliance of nine majority-ruled States in Southern Africa known as the Southern African Development Coordination Conference (SADCC), with the main aim of coordinating development projects in order to lessen economic dependence on the then apartheid South Africa.[61] SADCôs objectives are to achieve development and economic growth, alleviate poverty, enhance the standard and quality of life of the peoples of Southern Africa and support the socially disadvantaged through regional integration; evolve common political values, systems and institutions; promote and defend peace and security; promote self-sustaining development on the basis of collective self-reliance, and the inter-dependence of Member States; achieve complementarities between national and regional strategies and programmes; promote and maximise productive employment and utilisation of resources of the region; achieve sustainable utilisation of natural resources and effective protection of the environment; and strengthen and consolidate the long-standing historical, social and cultural affinities and links among the peoples of the region.[62]

SADC is meant to play a significant role in coordinating and ensuring harmonization in the implementation of food safety regulations taken from international standards but also in regional efforts to combat food issues. For example, SADC maintains an SPS secretariat that collects information on food safety related issues emerging in Southern African nations to ensure no inconsistencies emerge or trade restrictive actions taken.

SADC is also meant to act as a forum for regional scientists to discuss regional issues and to coordinate effectively. The SADC Protocol on Trade governs trade relations amongst the SADC countries and its objectives as outlined in the protocol are: to further liberalize intra-regional trade in goods and services on the basis of fair, mutually equitable and beneficial trade arrangements,

[60] Southern African Development Community, 'SADC Profile', http://www.sadc.int/index/browse/page/52. Accessed on 13 February 2011.
[61] Southern African Development Community, 'SADC Profile', http://www.sadc.int/index/browse/page/52. Accessed on 13 February 2011.
[62] Southern African Development Community, 'Declaration and Treaty of SADC', http://www.sadc.int/index/browse/page/119. Accessed 13 February 2011.

complemented by Protocols in other areas; to ensure efficient production within SADC reflecting the current and dynamic comparative advantages of its members; to contribute towards the improvement of the climate for domestic, cross-border and foreign investment; to enhance the economic development, diversification and industrialization of the Region; and to establish a Free Trade Area in the SADC Region. Article 16 of the SADC Protocol on Trade stipulates that Member States shall base their sanitary and phytosanitary measures on international standards, guidelines and recommendations, so as to harmonize sanitary and phytosanitary measures for agricultural and livestock production. Annex VIII of the SADC Protocol on Trade concerns Sanitary and Phytosanitary Measures. Its objectives are: to further liberalize intra-regional trade in goods and services on the basis of fair, mutually equitable and beneficial trade arrangements, complemented by Protocols in other areas; to ensure efficient production within SADC reflecting the current and dynamic comparative advantages of its members; to contribute towards the improvement of the climate for domestic, cross-border and foreign investment; to enhance the economic development, diversification and industrialization of the Region and; to establish a Free Trade Area in the SADC Region.

SADC has an SPS Annex to the SADC Protocol on Trade (SPS Annex). This Annex was approved by the SADC Ministers of Trade and Industry, jointly with the TBT Annex, in 2008. The SADC strategy is based on strengthening harmonization with the objective of facilitating trade, and promoting food safety in the region. [63] In a questionnaire sent to all Regional Economic Communities in Africa by the STDF, SADC noted that the "broad expectation is that Member States will comply with the provisions of the SPS Annex and form the necessary national institutions that will feed into the regional SPS coordinating body."[64]

SADC acknowledges the different level of development and technical capacity of its Member States and considers that its role is to assemble the adequate know-how to support the individual efforts of countries. The Food Safety Capacity Building on Residue Control (FSCBRC) project is an example of an initiative that has been designed by SADC to fill in the gap and build the capacity of Member States to set a comprehensive control system framework to address and harmonise WTO/SPS standards in order to smoothen trade of agri-products within and outside the region. Indeed, meeting WTO/SPS standards also improves the competitiveness of the agribusiness sector driving at the same time the demand for high quality raw materials and processed products. Expansion of trade has a direct relationship to poverty reduction and accelerated economic growth in developing countries, with a heavy impact on the agricultural sector. Besides the trade objectives related to harmonization

[63] Standards and Trade Development Facility: Regional and SPS Frameworks and strategies in Africa, http://www.standardsfacility.org/Files/Publications/STDF_Regional_SPS_Stategies_in_Africa.pdf, July 2010, p. 15.
[64] Ibid.

of SPS measures, the compliance with these measures leads to improved food security and food safety for consumers. Food safety is closely linked with human health and productivity and therefore is at the heart of SADCôs efforts to increase wealth and growth in the region.

The FSCBRC aims to harmonize food safety control regulations, guidelines and procedures through institutional strengthening in the SADC region in conformity with international requirements - in order to increase exports while complying with consumer safety requirements. Rather than developing regional standards, which would then encroach on the role of Codex within the region, SADCôs efforts to reinforce harmonization include the development of regional guidelines to help Member States to implement international standards in a practical manner. Reportedly, three such guidelines have already been developed. Regional technical committees meet prior to the meetings of the ISSOs to discuss common issues. Another important aspect of SADC's approach relates to the operation of SADC Cooperation in Standardization (SADCSTAN) which aims to promote the coordination between SPS and TBT in relation to standardization activities and services with the purpose of achieving harmonization of standards and technical regulations in the region.[65] In addition to this SADC is planning on developing a comprehensive strategy and action plan to help Member States implement the SPS Annex.

In cooperation with several partners, SADC launched several capacity building activities that relate to SPS matters in the region. In addition to the Food Safety Capacity Building on Residue Control (FSCBRC) project, mentioned above, they include *inter alia*:

(i) development of a SADC Harmonized Seed Regulatory System including a seed certification and quality assurance system aiming at reducing costs and the facilitation of seed trade;
(ii) publication of a "Field Handbook on Pests and Diseases of Phytosanitary Importance in the SADC region for distribution to SPS officers at border posts;
(iii) Foot and Mouth Disease (FMD) project to prevent the spread of this disease;
(iv) Transboundary Animal Diseases (TADs) project aiming at strengthening institutions for risk management of Transboundary Animal Diseases in the SADC region;
(v) Promotion of Regional Integration in the SADC Livestock Sector (PRINT) project, which attempts to "lay down a sustainable basis for a coherent regional approach to the development of the livestock sector in the SADC region".

[65] Ibid.

SADCôS SPS training is also covered under EU-funded projects on Standardization, Quality Assurance, Accreditation and Metrology (SQAM), on food safety and, to a lesser extent, the PAN-SPSO project.[66]

Standards in Trade Development Facility

Technical capacity in developing food safety standards still remains a challenge for many developing countries. As a result, the SPS Committee along with the FAO, WHO, Codex, United Nations Trade and Development Committee (UNCTAD), the OIE, and the UN Industrial Development Organization (UNIDO) established the STDF in 2003. The STDF derives its funding from these organizations and from individual states. Its focus is on building technical capacity in developing countries for food safety systems, in particular, developing member states can seek assistance from the STDF in establishing food safety measures and regulatory capacity.[67] Recent STDF projects have related to improving risk assessment techniques in Colombia, pesticide residue monitoring in Africa, and building trade capacity for fresh fruits and vegetables in South Asia.

The STDF epitomizes the cooperative nature of the IFSC. Here, different institutions and actors come together to fund a crucial activity that promotes effective food safety system implementation. Each institution does not attempt to broaden its competence in the IFSC leading to competition, rather empowers the STDF to fulfill an important role in the IFSC, that of implementation. The STDF is a crucial entity particularly as regional organizations like SADC remain ineffective in Southern Africa in ensuring the implementation of food standards.

External Donors

External donors such as the European Community and Japan also provide assistance to the food safety complex in developing countries in an effort to assist in the development of mechanisms required for their trading partners to meet their safety standards.[68] Through explicit bilateral initiatives, SADC countries benefit from the provision of technical expertise in making advancements in food safety systems. These bilateral technical capacity development programs serve to fill gaps identified by developing countries and ensure compliance with international standards.

The Case for Cooperation in the IFSC

In considering the IFSC, it is clear that each institution plays a specific role and does not encroach into any of the othersô territory but rather, the IFSC sees a cooperative endeavour between institutions

[66] Ibid. p.16.
[67] Standards in Trade Development Facility,
[68] Southern African Development Community, 'FSCBRC Project', http://www.sadc.int/fanr/crops/fscbrc/index.php.

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that reinforce the institutional roles and responsibilities within food safety. The existence of an international complex that cooperates and has functional niches does not support the hypothesis that cooperation has been at the heart of IFSC evolution. Further analysis is required to establish how these institutions emerged within the complex. Gehring and Faude would likely contend that the functional niches held by the IFSC were a result of competition in the early days of the IFSC emergence. However, the context through which these institutions emerged and the timing of their creation suggests that relevant institutions and actors cooperated rather than competed. This would then suggest that cooperation underpins the IFSC and is reinforced through cooperative endeavours between the actors. Whilst these endeavours support the notion of cooperation as the outcome of the IFSC, cooperation is also then apparent in its creation. If the functional niches embodied by the component institutions of the IFSC were present at the time of their creation, this would support the idea that timing matters in how functional niches are formed.

The STDF, the EU led project with SADC and even Codex were established with the intent of filling functional niches that were not accounted for by existing institutions in the IFSC. Codex was formed in 1963 by the FAO and the WHO recognizing that international standards on food would contribute to improved food safety and security globally. Both these organisations predated the Codex and there is no evidence that these two institutions competed for competence in the food safety area. Each had specific mandates that pertained to food safety but neither was responsible for the development of multilateral standards. Rather, Codex seems to have emerged as a result of officials in both the FAO and WHO and member states recognizing the need for multilateral standards. The FAO and WHO came together in a cooperative endevour to establish the necessary institution to facilitate these standards. Right from the beginning the Codex filled a functional niche through bringing together state actors to debate, discuss and negotiate multilateral food standards. Codex was established to develop food standards, codes of practice, guidelines and recommendations.[69] Many of these texts also deal with the operation and management of production processes, as well as the operation of government regulatory systems for food safety and consumer protection. Country participants in the round of negotiations recognized that measures ostensibly adopted by national governments to protect the health of their consumers, animals and plants could become disguised barriers to trade as well as being discriminatory. Consequently, the SPS and the TBT Agreements were included among the Multilateral Agreements on Trade in Goods, annexed to the conclusion of the Uruguay Round of trade negotiations in 1994. The SPS Agreement acknowledges that governments have the right to take SPS measures necessary for the protection of human health and considers Codex standards to be beyond judicial contestability.[70] This explicit ceding of responsibility to the Codex reinforces the idea of

[69] Codex Alimentarius Commission, 'Codex and the International Food Trade', http://www.fao.org/docrep/w9114e/w9114e06.htm. Accessed on 13 February 2011.
[70] World Trade Organisation, Sanitary and Phytosanitary Measures: Text of the agreement, http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm, SPS Article 3.1 and 3.2.

cooperation underpinning the establishment of the IFSC. The only point at which the SPS Agreement permits member governments to deviate from these norms is if there is a legitimate scientific justification.[71] The SPS oversees international consistency with Codex standards and offers recourse when a state unjustifiably deviates from them. SADC, on the other hand, has developed the SADC SPS Annex. This Annex was approved by the SADC Ministers of Trade and Industry, jointly with the TBT Annex, in 2008 and seeks to oversee implementation and harmonisation of food safety standards in the Southern Africa region.

So as we can see, the IFSC has seen coordination between the different institutions with each institution playing a complementary role within the institutional complex. This appears to be a result of the evolution of the IFSC over a long period of time, as opposed to within a short concentrated period. The IFSC was developed piecemeal as it was realized that new institutions were required to deal with specific issues. This temporal component reinforces cooperation over competition as functional niches are established not in a short period where institutions with similar competency vie for a role, rather institutions are created to fill a gap.

The high level of demand for technical capacity in food safety regulation also reinforces a cooperative IFSC. There exists a real need for resources to facilitate the implementation of the food safety standards within Southern Africa. There is much need for food safety capacity building within the Southern African region, providing much room for a multiplicity of actors to perform the role of financial assistance. Recognizing this, member institutions in the IFSC have come together to form cooperative initiatives that address developmental issues in food safety regulation in Africa. The Codex Trust Fund and the STDF provide financial assistance and expertise to a region in addition to external donors. The nature of the technical and financial assistance mechanisms also appears to fill functional niches within the IFSC. For example, STDF focuses on technical capacity development for developing and Least Developed Countries (LDC). The STDF was founded under a similar context as Codex in 2003 after IFSC institutions recognized that key to the success of international standards was also building technical capacity to implement them. Many developing countries associate meeting food safety standards with significant non-tariff barrier to trade. The STDF was not created to take responsibility for technical capacity development away from the other IFSC institutions, but rather, developing countries within the IFSC had unmet needs that were acknowledged and subsequently addressed by the STDF. As a result, the STDF was created by a group of international institutions to fill the functional niche of capacity development in developing countries under a cooperative context.

[71] Codex Alimentarius Commission, 'Codex and the International Food Trade', http://www.fao.org/docrep/w9114e/w9114e06.htm.

The Codex Trust Fund is primarily used for ensuring developing country participation in standard development meetings as opposed to actual technical capacity development programs. External donor efforts tend to be targeted in building technical capacity in areas where the STDF falls short or where there is a specific requirement for market access to a specific region or state. The EU project on maximum residue limits (MRL) in SADC is another example of how cooperation in the IFSC is endemic.[72] EU officials saw that many Southern African nations struggled to regulate and meet MRL requirements for food product and so the EU filled a functional niche providing bilateral aid and training personnel to SADC to build technical capacity in this area. At no point has the EU project overlapped or competed with activities of other IFSC members in this regard.

Given the timing of the emergence of these technical and financial assistance mechanisms within the IFSC and the developmental nature of the African region, a likely explanation for cooperation and the establishment of functional niches emerges. However, this idea is contested by Gehring and Faude who argue that institutions within a complex start from the same point and compete to create a functional niche.[73] Further, this literature argues that no two populations can apply the same niche for a long time because the competition between them will force the weaker party to adapt by carving out another niche or abandon the system altogether.[74] But looking simply at when the STDF, Codex Trust Fund and EU activity in the region occurred and under what auspices, cooperation in carving out a functional niche for each actor seems to have occurred from the beginning. Indeed each actorôs mechanisms are available to different countries with little or no overlap. The STDF was created in 1997 always with the mandate to assist developing and LDC with technical capacity development such as inspection systems, risk analysis models and testing facilities. The Codex Trust Fund was established in 2003 always with the mandate to assist developing countries participate in the work of Codex. The EU activities in the region have been ongoing over a long period and always related to developing technical capacity in order to ensure African products would meet EU import requirements for foodstuffs. The lack of technical capacity in Southern Africa, therefore, is also a likely explanation for the lack of competition between these actors and institutions in the IFSC. The demand for technical and financial assistance to meet international standards within the region is just so great that supply provided from actors within the complex is not being exhausted.

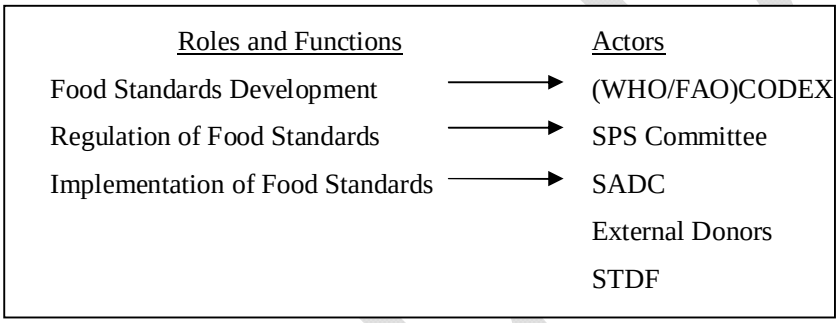
Gehring and Faude draw from the organizational ecology literature that argues that competition and not cooperation or co-existence constitute the main characteristic of populations of organizations

[72] Southern African Development Community, 'FSCBRC Project', http://www.sadc.int/fanr/crops/fscbrc/index.php. Accessed on 13 February 2011.
[73] Faude. B, and Gehring. T, 'Institutional Ecology and the Evolution of Broader Structures of International Governance. The Trade and Environment.' Paper presented at the annual meeting of the Theory vs. Policy? Connecting Scholars and Practitioners, New Orleans Hilton Riverside Hotel, The Loews New Orleans Hotel, New Orleans, http://www.allacademic.com/meta/p416842_index.html.p6
[74] Ibid.

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because the actors compete over scarce resources however this characteristic is not prevalent within the IFSC. In the context of Africa, many nations do not have fully functioning food safety systems and therefore require significant technical and financial assistance from developed countries. This results in the international institutions and developed countries struggling to keep up with the demand in these African countries and so the demand exceeds the supply and until this situation is reversed there are no resources over which to compete. The demand for technical and financial assistance is so great that supply provided from actors within the complex is not being exhausted.

Figure 2: Roles and Functions of IFSC Actors

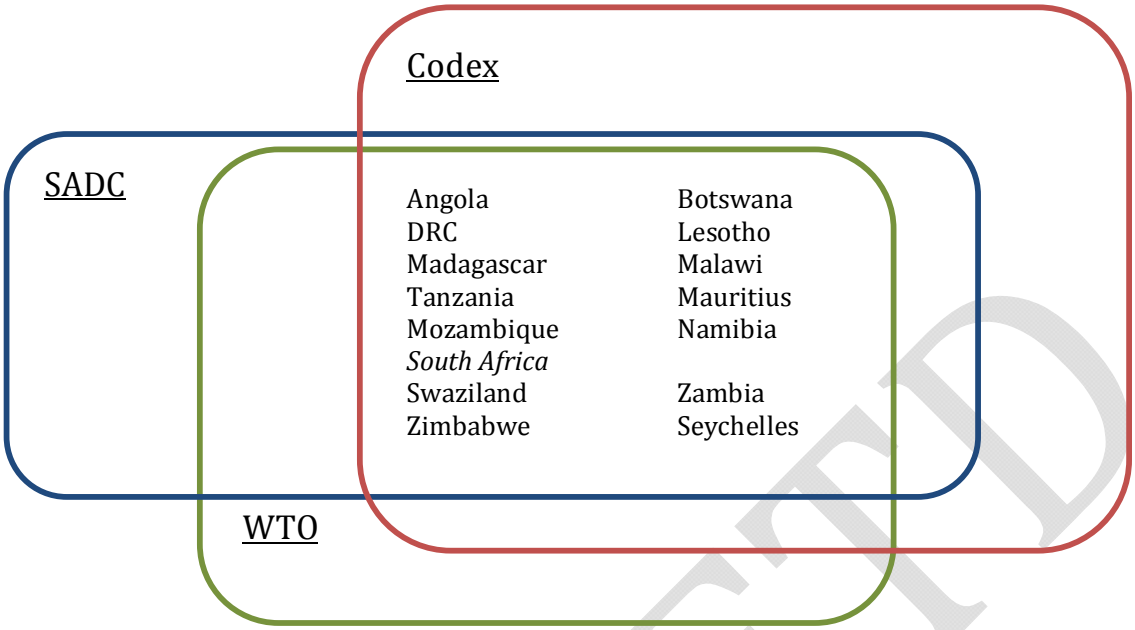


The notion of timing and absolute need does not appear to figure into the general belief about institutional complexes and how they operate in contexts of overlap therefore this dissertation serves as a contribution towards this growing literature.[75]

The IFSC in Southern Africa consists of highly overlapping memberships in all of the stakeholders of the governance structures but this does not appear to create problems (See Figure 3.) The institutions involved within this complex are all concerned with food safety, yet there is no evidence of competition.

[75] Young, O. et al, .Institutional Interplay: Biodiversity and Trade. *United Nations University*. 2008.

Figure 3: Overlapping Memberships in Southern Africa



Overlap can also extend beyond membership to a normative context between relevant institutions within the IFSC. For example, there is a remarkable coherence between the standards of behaviour laid out by the SPS Agreement and the SADC SPS Annex. This raises questions about whether normatively similar institutions continue to be effective or if they end up working against each other.[76] Sydnes, discusses the overlap between the SPS Agreement and the Cartagena Biosafety Protocol demonstrating how they can work against each other instead of being mutually reinforcing.[77] However, the IFSC continues to buck this trend despite the fact that each institution has its own administrative and bureaucratic structure. The clear delineation between the functions and roles of the institutions and organisations involved results in a structure that is not redundant and as a result there is no risk of contradictory norms that might undermine each otherôs performance. The institutions function under one monitoring and enforcement complex, the WTO SPS Agreement, and thus avoid the risk of contradictory norms that might undermine the performance of each institution. The role of SADC is to implement the norms coming from the IFSC in a manner consistent with the SPS Agreement and in a way that fosters regional harmonization. One could argue that the SADC SPS Annex is almost a mirror of the SPS Agreement. SADC SPS rules were developed with the intention to be consistent with the SPS Agreement and to facilitate harmonization and regional or international integration.[78] The IFSC can therefore be identified as an empirically relevant case where a group of

[76] Rosendal, K., 'Impacts of Overlapping International Regimes: The Case of Biodiversity,' in Global Governance, Vol. 7, No. 1, 2001, pp. 95-117.
[77] Syndes, A.K., 'Overlapping Regimes: The SPS Agreement and the Cartagena Protocol.' eds Young, O. et al., (2008). Institutional Interplay: Biodiversity and Trade, United Nations University, 2008, pp. 71-93.
[78] Southern African Development Community: Sanitary and Phytosanitary (SPS) Annex to the SADC Protocol on Trade, Article 6.

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state actors have actually maintained overlapping memberships in a group of international institutions, which are similar and function to ensure globally compatible food safety regulation in Southern Africa.

What the development and evolution of the IFSC demonstrates is that establishing a new institution within an already densely populated institutional landscape can be done in a cooperative context without risk of overlap causing policy inertia or competition between the institutions. Indeed, it appears that in the context of food safety, institutions can be created to fill an area of need as and when the need becomes apparent. This development holds that the creation of regional cooperation agreements such as SADC do not necessarily generate tensions with other international institutions that maintain similar competencies in areas such as food safety, but rather reflect a grand design type of approach to food safety regulation where every actorôs functional niche is pre-determined.

The establishment of the SADC SPS Agreement in an area already governed by the WTOôs SPS Agreement did not incite any competition between the two institutions but allowed for a more coherent strategy with which to implement the food safety complex in Southern Africa and ensures consistency with international obligations. SADCôs involvement in the food safety complex allows for further implementation of SPS measures. In addition to this, the WTO SPS committee recently granted observer status to SADC and two other regional organisations following its meeting from March 17-18, 2010 in order to ensure consistency in the regional approach to international activities. This is highly beneficial for Southern Africa as individual countries find it difficult to attend all the meetings and stay current on SPS deliberations. As a result, SADCôs inclusion allows for a more effective dissemination of discussions at the WTO.

Given that the case for cooperation in the emergence of the IFSC has been made through highlighting that timing of institutional emergence and technical and financial need matter, the next chapter assesses how the IFSC has influenced food safety regulation in the Southern African region. A single case study of South Africa offers some insight into the opportunities and challenges that have been created. South Africa is an ideal case study as it maintains a sophisticated food safety system which acts as a regional leader in Southern Africa. Indeed, there is much disparity surrounding the support of food safety laws by developing countries, not only in Africa but around the world. Some developing countries strongly support the SPS Agreement whereas some consider the measures as protectionist. Large middle-income countries with great agricultural and food export potential like Mexico, Chile, Argentina, Brazil, many of the ASEAN countries as well as South Africa support the SPS Agreement and work hard both to exploit its current opportunities as well as to improve it.[79]

[79] Jensen, M.F., 'Reviewing the SPS Agreement: A Developing Country Perspective', Centre for Development Research Working Paper, February 2002. p. 36.

Chapter *3*

South Africa and Food Safety

So what is the influence of the IFSC on domestic food safety policy development in Southern Africa? Is there any influence at all? The aim of this chapter is to look at how cooperation at the international level has influenced domestic food safety development and how national departments have dealt with the overlapping international institutions and the functional niches established. For the purposes of conceptual clarity a single case study of South Africa is being conducted.

South Africa maintains policy coherence with international principles, norms and standards espoused through the IFSC. In understanding how the IFSC and the South African food safety regulatory framework relate, this chapter will also focus on the notion of participation. In particular, South African participation in IFSC institutions can be determined through considering two aspects: normative congruence in the structure and legislation of the South African food safety system with the IFSC; and the degree to which officials participate and advocate South African positions in IFSC institutional meetings.

South Africa has the biggest market within the SADC region. South Africa alone accounts for 50% of all intra SADC trade.[80] As a result, it plays a leadership role in the development of food safety standards. In South Africa, food legislation is the responsibility of mainly the health and agricultural sectors. Food control is defined as ña mandatory regulatory activity of enforcement by national, provincial or local authorities to provide consumer protection and ensure that all foods during production, handling, storage, processing and distribution are safe, wholesome and fit for human consumption; conform to quality and safety requirements; and are honestly and accurately labeled as prescribed by law.ò[81] Because the food industry is the largest manufacturing sector within the South African economy, food safety has socio-economic implications on trade, public health, food security and poverty. The area of food safety is shared between three governmental departments ï the Department of Health (DoH), Department of Agriculture, Forestry and Fisheries (DAFF) and the Department of Trade and Industry (DTI) ï provinces, municipalities, industry and consumers (See Figure 4). Provincial or district health authorities that exercise food safety control at land ports of entry are expected to take cognizance of developments regarding SPS measures within SADC.

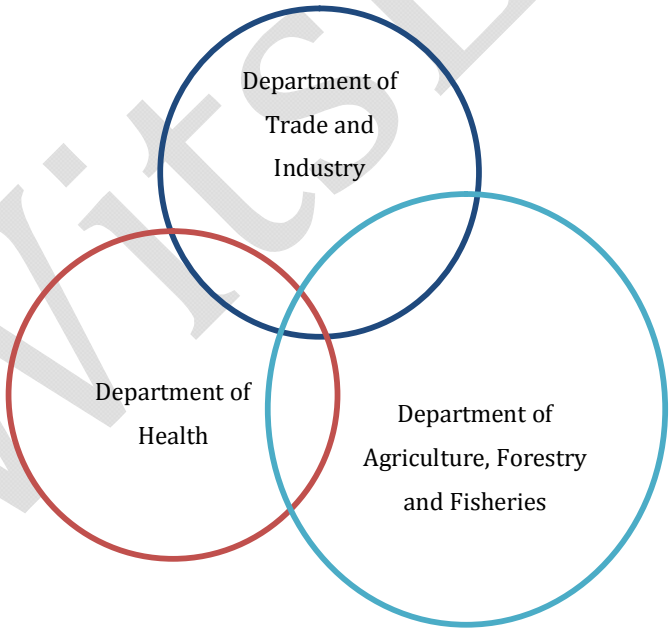
[80] Development Policy Research Unit University of Cape Town, Trade patterns in the SADC region – key issues for the FTA , http://www.commerce.uct.ac.za/Research_Units/DPRU/PBriefsPDF/PDFs/P9.PDF., March 2001.
[81] Department of Health: Policy Guidelines: National Food Safety Alerts and Official Food Product Recalls in South Africa, http://www.doh.gov.za/docs/factsheets/guidelines/foodsafety/guideline.pdf. p.4.

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Foodstuffs entering the country are meant to comply in all respects to the requirements of the Foodstuffs, Cosmetics and Disinfectant Act, 1972 (Act 54 of 1972) which, in turn, should be based on the standards, guidelines and recommendations of the Codex. [82]

Like the IFSC, South Africa maintains a decentralized dynamic in food safety regulation. South Africa does not have an overarching body that regulates food safety within the country like in the EU, US or Canada. Instead, South Africaôs food safety complex is governed by a number of government departments at the federal (National), provincial and local levels.[83] Each institution within South Africa maintains a specific competence and role in food safety regulation. South Africaôs decentralized food safety complex reflects the decentralized nature of the IFSC. As Figure 5 on page 55 highlights, the different departments play different roles within South Africa and are also involved in the different institutions. Whilst, South Africa maintains a sophisticated and well functioning food safety regulatory framework, such a decentralized approach leads to a complex institutional framework that lacks systemic coordination. This is meant to be rectified by constituting a national SPS committee within South Africa, as per SADC rules, but this committee has fallen into abeyance.[84]

Figure 4: South Africaôs Food Safety Complex



[82] Department of Health, 'Directorate: Food Control', http://www.doh.gov.za/department/dir_foodcontr.html. Accessed on 13 February 2011.
[83] Department of Health Official, August 2010.
[84] Personal Interview with Department of Agriculture Foresrty and Fisheries Official, 18 October 2010.

Roles and Functions of the Institutions within the Food Safety Interlocking Governance Structure in Southern Africa

The Department of Health (DoH)

The DoH is responsible for setting food safety and regulatory nutrition standards (including food labeling) at the national level. Internationally it participates in Codex, the WHO International Food Safety Authorities Network (Infosan), EU Rapid Alert System for Food and Feed and other African regional initiatives including SADC and the AU. Compliance, monitoring and law enforcement is done by the local and provincial authorities. The DoH is primarily responsible for the overall coordination, determination of norms and standards, international liaison and cooperation and provision of support to the provinces and local authorities. Through the Directorate of Food Control, the food related functions of the DoH are as follows:

- The preparation and administration of food legislation, regulations and policies in line with international standards.
- The evaluation of animal drugs, agricultural remedies such as pesticide and foods derived from genetically modified organisms (GMOôs), for safety to both the animals and the humans who subsequently consume products deriving from these animals and the determination of Maximum Residue Levels (MRLs).
- Establishing good food manufacturing practices and other production standards such as packaging and labelling requirements and HACCP programmes.
- Consumer education on safe food handling practices.
- Ensuring that the Department of Health fulfils its obligations as the national contact points for the Codex Alimentarius Commission, International Food Safety Authorities Network (INFOSAN) of WHO and the Rapid Alert System for Food and Feed (RASFF) of the EU.
- Setting limits for pathogens, food additives and contaminants (i.e mycotoxins, heavy metals, etc.) in terms of Act 54 of 1972.
- Supporting/advising provinces and local authorities regarding their food control related functions, as well as other stake holders such as industry, consumer bodies, the media etc. on food control related matters.

The nine provincial health authorities are responsible for Port Health Service which includes activities such as the control of imported foodstuffs on behalf of the Director-General of the National Department of Health. Local authorities are also obligated to upon request by the Minister of Health to enforce relevant provisions of Act 54 of 1972. The National Health Act of 2003 further defines the responsibility of municipalities as rendering municipal health services which include food control as provided for in the definitions of MHS included in the Act.

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The Food Control directorate in DoH is responsible for the administration of the following legislation related to foodstuffs that are guided by the Codexôs Recommended International Code of Practice: General Principles of Hygiene:

- *The Foodstuffs, Cosmetics and Disinfectants Act 1972 (Act 54 of 1972)*. This act governs the manufacture, sale and importation of all foodstuffs from a public health point of view. This is the responsibility of the Directorate of Food Control and needs to comply with specific international guidelines within the Code of Practice such as Section III on Primary Production which includes handling, storage and transport[85].

- *The Health Act of 1977 (Act 63 of 1977)*. The Act provides for the provisions governing the hygiene of food premises including milking sheds and the transportation of food and should also be in line with the Code of Practice with specific reference to Section III and Section IV which refer to both Primary Production and the Establishment: Design and Facilities respectively.[86]

- *The International Health Regulations Act 1974. This Act* governs the approval of food premises that are used to produce food that is consumed at airports, ports, vessels and aircraft. Provincial health authorities on behalf of National Department carry out inspections and approval of these premises. In terms of the new International Health Regulations, the Directorate: Food Control also deals with food safety alert notifications of international concern, such as those received from INFOSAN and RASFF.

- *The Medicines and Related Substances Act, of 1965 (Act 101 of 1965). This Act* makes provision for the registration of veterinary drugs and should be in line with the recommendations provided by the Codex Committee Residues of Veterinary Drugs in Foods (CCRVDF) which are then circulated to governments and other interested parties for comments and then later added to the Codex Alimentarius.[87] Foodstuffs and food supplements with medicinal effects are also administered by the Department of Health. .

- *National Health Act, 2003 (Act 61 of 2003)*. This Act provides for the rendering of municipal health services by the six metro and 46 district municipalities. The definition of municipal health services included in the Act is based on the elements of environmental health services,

[85] Codex Alimentarius Commission: Recommended International Code of Practice : General Principles Of Food Hygiene, CAC/RCP 1-1969, Rev.4- 2003.
[86] Ibid.
[87] Codex Alimetarius Commission: Codex Alimentarius: Veterinary Drugs, http://www.oie.int/RR-Europe/eng/events/FS-SS-Codex-vet_drugs.pdf

including food control. The Directorate: Food Control supports the mentioned municipalities related to their law enforcement and food monitoring activities.

The Department of Agriculture, Forestry and Fisheries (DAFF)

The implementation of SPS measures within South Africa fall under the responsibility of DAFF. This is carried out through the Veterinary Public Health; Plant Health; Food Safety and Quality Assurance; and Agricultural Products Inspection Services. DAFF is the national body responsible for the monitoring and enforcement of certain aspects of food safety such as:

1. Plant Health

Plant Health is responsible for controlling the introduction of specific agricultural pests and diseases to protect agricultural production. In line with the guidelines of the International Plant Protection Convention, agricultural plant pests and diseases are controlled through the Agricultural Pests Act (Act No.36 of 1983). This Act determines the Directorateôs phytosanitary norms and standards and establishes and maintains international protocols and export programmes. This Act provides for export and import control of plants and plant products.

2. Food Safety and Quality Assurance

The Agricultural Products Standards Act, 1990 (Act 119 of 1990) controls and promotes specific product standards for meat, dairy products, cereals, fruits, canned fruit and vegetables prepared for both domestic and export markets. Physical inspections are carried out by the Perishable Products Export Control Board (PPECB). These products also have to comply with a number of provisions outlined in the Foodstuffs, Cosmetics and Disinfectants Act, 1972. Wines, spirits, beer and cider are in part regulated by the Foodstuffs, Cosmetics and Disinfectants Act, 1972. . This legislation needs to be consistent with the Codex: Principles for Food Import and Export Inspection and Certification.[88] The registration of agricultural remedies such as pesticides is carried out in terms of the Fertiliser, Farm feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947. Toxicological evaluations are conducted by the Directorate of Food Control in the Department of Health in order to determine the acceptable daily intake (ADI), however, maximum residue levels (MRLs) are published under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 and thus come under the authority of DAFF. The enforcement of residue levels is the responsibility of local authorities with regard to local foodstuffs and the provincial health authorities are responsible for enforcement of residue levels pertaining to imported foodstuffs. This would need to comply with the Codex Alimentarius Commission: Maximum Residue Limits for Veterinary Dugs in Foods.[89]Agricultural Product Standards Act No 119

[88] Food and Agriculture Organisation: Guidelines for Food Import Control Systems, http://www.fao.org/docrep/009/y6396e/Y6396E02.htm#ref2.1, 2003.
[89] Codex Alimentarius Commission: Compendium of Methods of Analysis Identified as Suitable to Support Codex MRL's, http://www.codexalimentarius.net/mrls/vetdrugs/vetd_ref/MAS-RVDF_2006_e.pdf.

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of 1990 ensures that pesticide levels in meat products are monitored by the Veterinary Public Health Directorate.

The officers responsible for sampling meat for chemical residues at abattoirs perform their duties in terms of the Meat Safety Act No 40 of 2000. Animal medicines are registered as stock remedies in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 or as veterinary medicines in terms of the Medicines and Related Substances Control Act, 1963. MRLs for these chemicals are also determined in accordance with the Foodstuffs, Cosmetics and Disinfectants Act, 1972.

3. Genetic Resource Management

The Directorate: Genetic Resource administer the Management Plant Breedersô Rights Act, 1976 (Act 15 of 1976), the Plant Improvement Act, 1976 (Act 53 of 1976) and the Act on Genetically Modified Organisms, 1997 (Act 25 of 1997).

4. Veterinary Public Health

As mentioned earlier, the Meat Safety Act No 40 of 2000 addresses food safety in the red meat and poultry abattoirs and sets hygiene standards for abattoirs as well as unprocessed meat imports. The Act is administered by the Directorate: Veterinary Quarantine and Public Health(DVQPH). Provincial agriculture departments are responsible for enforcing the Act and regulations. The DVQPH is responsible for setting norms and standard for meat safety and inspecting food animals for diseases before and after slaughter. This act would also need to guided by international statutes such as the Code of Hygienic Practice for Meat developed by the Codex Committee on Meat Hygiene and the OIE. It constitutes the primary international standard for meat hygiene and incorporates a risk-based approach to application of sanitary measures throughout the meat production chain.[90]

5. Animal Health

Animal and animal products such as eggs, milk and meat are governed by the Animal Diseases Act, 1984 (Act 35 of 1984) and is administered by the Directorate of Animal Health. The Act controls this area from an animal diseases point of view.

Department of Trade and Industry (DTI)

The National Regulator for Compulsory Specifications (NRCS) falls under the ambit of the Minister of Trade and Industry and is responsible for food safety issues related to canned meat products , containing more than 10% meat and frozen and canned fish and fishery products through the Standards Act 1993 (Act 29 of 1993). The NRCS ensures that fish products conform to the compulsory specifications and is the appointed authority for certifying all fish exports to the EU and Australia. The NRCS is also responsible for administering the Trade Metrology Act of 1973 (Act 77

[90] Codex Alimentarius Commission: Codex Code of Hygienic Practice for Meat, http://www.oie.int/RR-Europe/eng/events/FS-SS-Codex-CHPM.pdf

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of 1973) and the Trade Marks Act, 1963 (Act 62 of 1963) both of which are concerned with food labelling. which is referred to in Section IX of the Code of Practice : Product Information and Consumer Awareness.[91]

The Influence of the IFSC on South African Food Safety

Regime theory is derived from the liberal tradition that argues that international institutions or regimes affect the behaviour of states or other international actors. Indeed, this literature provides much needed insight to examine the normative congruence between South African legislation and the IFSC institutions. International regime theory delves into a fundamental question that assists in this analysis though its attempt to answer how international institutions affect the behaviour of state and non-state actors in the issue areas for which they have been created. This chapter further looks at the role that the IFSC plays in governing and influencing the food safety standards within the Southern African Development Community (SADC) region using South Africa as a case study.

The study of international regimes is composed of three schools of thoughts that focus on the relations between the international institutions and the state. This chapter focuses on the school of thought that draws from the cognitivists. The cognitivist approach to international regime theory emphasises ñknowledge dynamics, communication and identities.ò[92] This theory is relevant in that this chapter looks at how much of an influence the WTO, as the overarching institution that dictates the rules relevant to food safety, has in the SADC region. Cognivist approaches to international politics stress ideas and knowledge as explanatory variables. The main critique held by the cognitivist school of thought towards the realist and liberal school of thought is that both these schools treat statesô identities and interests as exogenously given. Hasenclever et al. explain this as meaning that statesô identities and interests are treated as ñnon-theorised initial conditions in explanations of international phenomena such as international regimes.ò Cognitivists hold that the processes which produce the self-understanding of a state as well as their foreign policy objectives are shaped by normative and causal beliefs that decision makers hold and therefore as a result, belief systems can affect a stateôs policy. This chapter focuses primarily on the weak cognitivistôs understanding of international regimes to analyse the food safety regime. Weak cognitivists argue that the demand for regimes in international relations depends on an actorôs perception of international problems which is partially influenced by the causal and normative beliefs of the state. These beliefs are also considered partially independent of actorsô material environment which requires analysis of origins of these beliefs and the mechanics of their impact on international decision-making. The weak cognivists can be seen as

[91] Codex Alimentarius Commission, Recommended International Code of Practice : General Principles Of Food Hygiene, CAC/RCP 1-1969, Rev.4- 2003

[92] Hasenclever. A, Mayer. P, and Rittberger. V.: Theories of International Regimes, Cambridge University Press, United Kingdom, 2004, p. 136.

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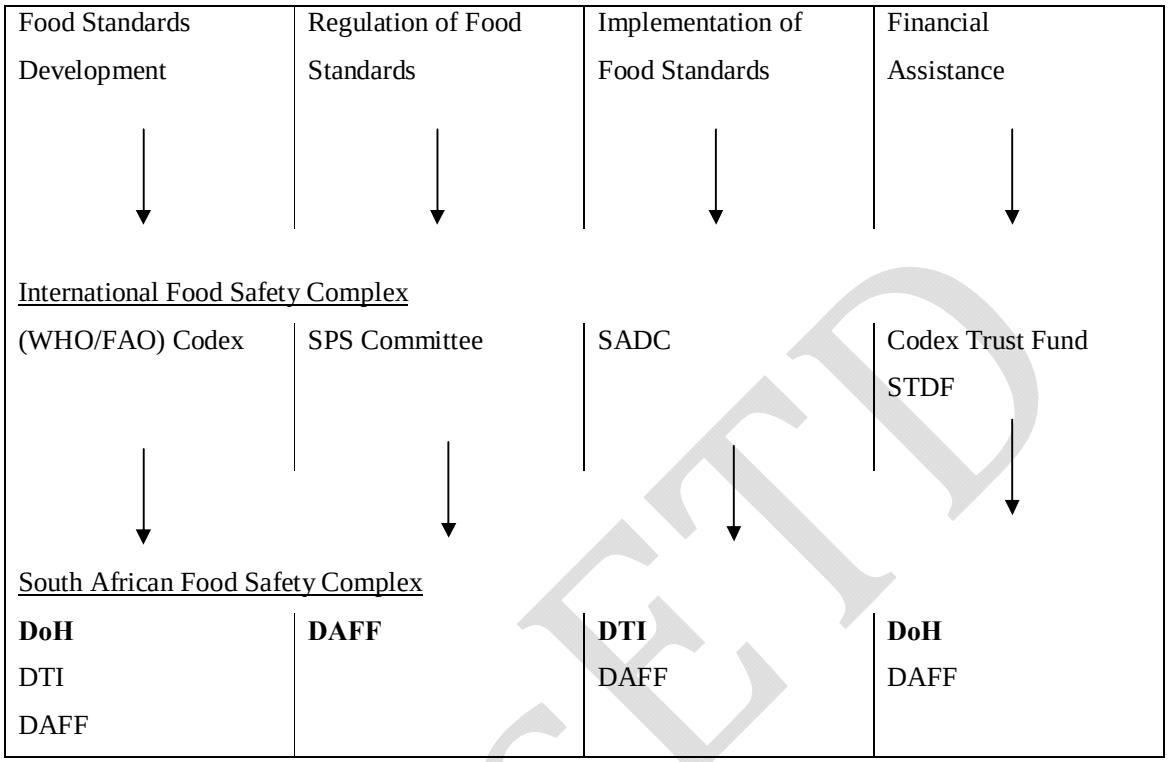
complementary to the mainstream rationalist schools which take preferences and options as exogenously given. Within the study of regimes, weak cognitivists remain consistent with the rationalist understanding of states as rational utility-maximisers but only upon the understanding that the perception of utility depends on knowledge and that this knowledge is irreducible to material structures. [93]

Goldstein and Keohane argue that changes in behaviour can to some extent be explained by variations in normative or causal beliefs.[94] They continue that the influence of ideas works through one of three ñcausal pathways.ò Two of those pathways relate particularly to international regimes. The one causal pathway allows for the notion that widely shared ideas may facilitate cooperation in the absence of any other means of its attainment. The ideas would thus serve as a point of agreement and help define solutions to collective action problems. The other pathway states that the impact of ideas is often mediated and enhanced by international norms and rules which are formulated under the influence of particular widely shared beliefs. The importance of ideas is reflected in that once ideas are incorporated into and ñembodied in institutional frameworks, they constrain public policy as long as they are not undermined by new scientific discoveries or normative change.ò[95]Not only are ideas fundamental in the explanation of the content within specific regimes including the IFSC, as Garrett and Weingast explain, in the absence of ideas that serve as a focal point for states, one might not have seen the formulation of regimes at all.

The South African food safety system is a regime endeavour with different government departments, provincial authorities and municipalities each playing a role. Such a decentralized approach to food safety regulation resembles that of the IFSC. Indeed, different departments participate in different international organisations depending on the issue and competence. Figure 5 shows the relationship between international organisations in the IFSC and South African authorities. Indeed, it could be argued that the structure of the IFSC promotes decentralization in Southern Africa as issues within food safety regulation such as standard setting, monitoring and enforcement, implementation and technical capacity development are treated in institutional silos internationally. In spite of this decentralisation, cooperation at the international level between the institutions allows for coherence within the IFSC. This cooperation does seem to reflect within South Africa between the different departments as each department pools its competency in efforts to pursue food safety; however, this also creates a number of pragmatic challenges for food safety regulation in South Africa.

[93] Ibid. p.137.
[94] Principled beliefs are "normative ideas that specify criteria for distinguishing right from wrong and just from unjust"; causal beliefs are defined as "beliefs about cause – effect relationships which derive authority from shared consensus of recognised elites ... [and] provide guides for individuals on how to achieve their objectives."
[95] Hasenclever. A, Mayer. P, and Rittberger. V., . Theories of International Regimes, Cambridge University Press, United Kingdom, 2004, p. 137.

Figure 5: Functional Niches



Is there Cooperation at the National level?

As can be seen in diagram above, each department fills a functional niche required to maintain a food safety structure in South Africa. The role of food standards development within the IFSC is performed by the Codex. As a joint venture between the FAO and the WHO, the South African DAFF, DTI and DoH participate within these institutions and perform the function at the domestic level. The regulation of food standards performed by the WTO SPS Committee at the international level is carried out by the DAFF at the domestic level in South Africa. These committee meetings are mostly attended by officers of the Crach-Food Safety and Biosecurity. In so far as implementing food safety standards, the DAFF and the DTI are responsible for ensuring that function within the South African Food Safety Complex. Financial assistance at the domestic level is mostly a collaborative effort between all three departments but is mostly provided for the DoH and the DAFF.

Each department is, involved in food safety as it relates to the overall role and function of the department and so there lies no room for competition or conflict within the area of food safety. Each department plays a specific role and does not encroach into the others departmentôs territory. The

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departments function within a functional niche that seems to have carved itself out within the food safety governance structure and so allows for a coherent food safety strategy at the domestic level. This suggests that a level of coordination can be seen within the South African food safety complex in so far as each government department works alongside each other with regards to enhancing food safety within their specific department. There however does not seem to be a national food safety coordinating body. Cooperation also appears to happen at the domestic level between institutions but that the lack of national coordination leaves what appears as policy silos. The weakness of a structure of this type lies in that in the event of a major food safety crisis, this lack of national coordination could lead to problems. The extent to which this lack of national coordination influences South Africaôs food safety system can be seen through an assessment of South Africaôs participation in the IFSC.

South Africa's Participation in the IFSC

Participating in the IFSC is critical to maintaining market access for South African foodstuffs in foreign markets, particularly the EU and North America. Participation in the IFSC, assists the international community to better understand the unique risks facing South African food production and aids in increasing awareness so as to improve South Africaôs capability in addressing such risks. On the other hand, participation in the IFSC however has a drawback in that it results in the transfer of knowledge and technical capacity development from highly developed food safety systems that seek to implement their food safety standards on developing countries. South Africa does not participate in the IFSC to the same extent as large developed countries and so much of its participation includes adhering to standards put forward by these countries. In spite of this however, the participation of South Africa in the IFSC has lead to the country playing a leadership role on the international stage acting as a strong voice for African and developing country interests. Ensuring a prominent African voice in the various institutional settings ensures that the region and continentôs views are taken into account and the degree to which South Africa participates in these institutions highlights the leadership role that it has taken in this area. This section looks at the degree of participation that South Africa has had in two important international institutions involved in the IFSC ï the CODEX and the SPS Committee.

South Africa became a member of Codex on 26 July 1994 after the Department of Health initiated the country's application. South Africa regards active participation in this committee very highly to ensure that Codex standards are taken up in their food regulations. South Africa has a National Codex Committee (NCC) which was established with the objective of developing positions on Codex draft standards, guidelines and recommendations; and participating in sessions of the Commission as well as those committees whose activities are relevant to the functions of the NCC representatives. The

NCC comprises components of the following: Department of Health (Directorates: Food Control, Medicines Administration and Nutrition) Department of Agriculture, (Directorates: Food Safety and Quality Assurance, Genetic Resources and Veterinary Services and Plant Health and Quality),Department of Trade and Industry ,South African Bureau of Standards and the National Consumer Forum. The Directorate: Food Control is the national Codex Contact Point for South Africa. The duties of the National Contact Point include the following: act as the link between the Codex Secretariat and the National Codex Committee; serve as the liaison point with the food industry, consumers, trade and all concerned parties to ensure that Government is provided with an appropriate balance of policy and technical advice; coordinate all relevant Codex activities in the country; coordinate the attendance of Codex meetings by members of the National Codex Committee; maintain a library of all Codex documents; create an awareness of Codex; and disseminate Codex documents to all interested parties.[96]

Given South Africaôs limited resources and the wide range of Codex programmes and activities, South Africa directs its efforts and resources to those committees that are of greatest interest, significance or relevance to the country. South African currently contributes to or actively participates in the following committees:

Codex Committee on General Principles,
Committee for Africa
Codex Committee on Nutrition and Foods for Special Dietary Uses,
Committee on Methods of Analysis and Sampling
Committee on Meat Hygiene
Ad hoc task Force on Animal Feeding
Codex Committee on Food Hygiene
Codex Committee on Veterinary Drug Residues in Foods
Codex Committee on Pesticide Residues in Foods
Codex Committee on Food Labeling
Codex Committee on Food Import and Export Inspection and Certification Systems (Codex Committee on Milk and Milk Products)
Codex Committee on Processed Fruit and Vegetables
Codex Committee on Food Additives and Contaminants (Codex Committee on Cocoa Products and Chocolate, Codex Committee on Sugars, Codex Committee on Fats and Oils)
Codex Committee on Fish and Fishery Products
Codex Committee on Fresh Fruit and Vegetables

[96] Department of Health, 'Codex Aalimentarius Commission', http://www.doh.gov.za/department/foodcontrol/codex.html

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Ad hoc Task Force on Biotechnology
Ad hoc Task Force on Fruit and Vegetable Juices[97]

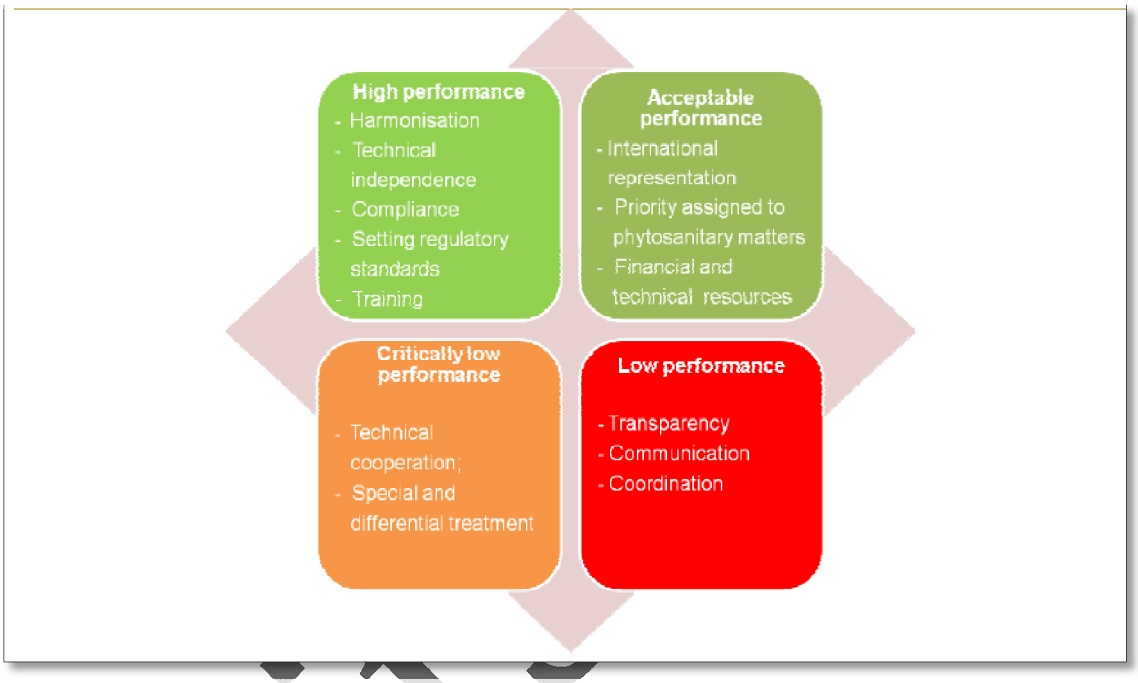
South Africaôs participation in these committees is quite substantial given the countryôs limited financial and administrative resources. South African representatives present at these meetings participate quite actively and are consistent contributors to technical discussions in these committees thus playing a role in the development of international standards. South Africa oftentimes puts forwards comments to these committee discussions as an individual member country and at other times alongside other member countries with whom it shares similar interests in the discussions at the hand. One only needs to look Codex Committee reports to note the interventions and influence of South Africa either as a single voice or as part of a grouping. For example, at the 33rd session of the Codex Alimentarius, it is evident that South Africa was active at a technical level in the dealings of subcommittees with such things as standards for preventing *campylobacter* and *samonella* in chicken, Maximum Residue Limits for *Ractopamine*, proposed standards for fish sauce, General Principles for Establishing Nutrient Values of Vitamins and Minerals for the General Population, and revisions to the international standard for Milk and Milk Products.[98]

In contrast the Codex Committee, South Africaôs participation in the SPS Committee is relatively low. An enquiry point and national notification authority are the two institutions, which are in charge of consultation regarding SPS matters within a country and other members of the WTO. For transparency reasons, WTO members are required to notify ñSPS enquiry pointsò and ñnational notification authoritiesò.[99] The enquiry points are responsible for answering relevant questions in the SPS area. The notification authorities are responsible for ensuring that new or changed SPS measures are notified to the WTO. In spite of the fact that many African countries do not have these institutions, South Africa has both an enquiry point and notification authority which are both overseen by the Director: International Trade based at the Department of Agriculture, Forestry and Fisheries. Since South Africaôs first notification on 11 April 1996 concerning the temporary suspension of the importation of beef from the United Kingdom due to the possible health threat of the occurrence of Bovine Spongiform Encephalopathy (BSE) in cattle in the United Kingdom, within the 15 year period, South Africa has only made 27notifications.[100] This number of official notifications is low given the level of South Africaôs participation in Codex. As well, in contrast to its middle income country partners like Brazil which has notified over 927 regulations and India that has notified over

[97] Ibid.
[98] Codex Alimentarius Commission: 33rd Session, International Conference Centre. Geneva, Switzerland 5-9 July. http://www.codexalimentarius.net/web/archives.jsp?year=10.Accessed on 31 January 2011.
[99] Gebrehiwet, Y, Ngqangweni, S, and Kirsten, J.F, 'Quantifying the Trade Effect of Sanitary and Phytosantiary Regulations of OECD Countires on South African Food Exports' in *Agrekon*, Vol 46, No.1, p. 23-39.
[100] WTO (World Trade Organisation), 'SPS information management system', accessed 31 January 2011, http://spsims.wto.org/web/pages/search/notification/Search.aspx.

90 issues since 1996, it is interesting to consider if South African participation in the WTO SPS activities is seen as core to food safety regulation.[101] In a presentation made by a DAFF official, it was acknowledged that communicating and being transparent in SPS contexts is an area of ólow performanceô and technical coordination with WTO partners is an area of ócritically low performance.ô[102] (See Figure 6.)

Figure 6: SPS Performance Matrix



Source : Mooketsa R, óPublic private partnerships in spport of sanitary and phytosanitary capacity: A South African case studyô, Presentation to the Standards in Trade Development Facility, accessed 31 January 31 2011, http://www.standardsfacility.org/Files/PPP/Presentations/16-Mooketsa_Ramasodi.pdf

South Africa appears not to have set up the appropriate institutional framework to participate in the SPS Committee. Whilst there is no overarching body that coordinates country positions on SPS issues, there is for Codex matters. This may be one of the contributors to South Africaôs limited participation in the SPS Committee and so emphasises the need for an overarching national body that deals with SPS matters.

It is also apparent that representation of South African interests in SPS matters is a low performance area as well. In particular South Africa has not been active in challenging foreign SPS regulations through mechanisms such as the Specific Trade Concerns (STC) function at the SPS Committee or in

[101] Ibid.
[102] Mooketsa R, 'Public private partnerships in spport of sanitary and phytosanitary capacity: A South African case study', Presentation to the Standards in Trade Development Facility, accessed 31 January 31 2011, http://www.standardsfacility.org/Files/PPP/Presentations/16-Mooketsa_Ramasodi.pdf

the Dispute Settlement Mechanism. [103] South Africa has raised only one STC and supported five others in the total history of the SPS Agreement.[104] In contrast, Brazil has raised 24 STC and supported another 19 over the same period. [105] It is hard to believe there have been no foreign food safety regulations that have affected market access to South African products worthy of being formally challenged. Particularly given that Gebrehiwet et al., show that stringent sanitary and phytosanitary measures enacted by OECD countries continue to hinder South African food exports costing over US $70 million per year .[106]

The factors that lie in the critically low performance and low performance areas are factors that have contributed to a large degree to South Africaôs challenges within the food safety complex.

Challenges with Food Safety in South Africa

Despite actually being present at IFSC institution meetings, there continues to be a number of challenges presented by a cooperative IFSC in Southern Africa. In particular, the lack of a one-stop-shop for food safety at international level means that a country with modest financial and administrative resources must choose carefully where to direct much of its focus at the international level. Given that Codex is much more of a technical institution for developing international standards, South African officials appear to focus on this institution and proactively represent and negotiate the details of technical standards that will affect market access as opposed to challenging them post-hoc through the WTO. Ultimately, this makes the most sense when considering the use of financial resources and the decentralized structure of the IFSC. However, as South Africa develops government officials will be required to actively safeguard the interests of its agricultural sector, and this involves taking a real interest in the institutions that monitor and enforce international standards.

Whilst, South Africa maintains sophisticated and well-functioning food safety regulatory framework, such a decentralized approach leads to a complex institutional framework that lacks systemic coordination. This is meant to be rectified by constituting a national SPS committee within South Africa that coordinates roles and activities of all the public entities involved, as per SADC rules, but this committee has fallen into abeyance after briefly being established.[107] Different departments play different roles within South Africa and are also involved in the different international institutions.

[103] For a discussion on informal dispute resolution opportunities in SPS contexts please see: Hornsby DJ, 'WTO effectiveness in resolving transatlantic trade - Environment conflict' in *Journal of International Trade Law and Policy,* Vol. 9, No. 3, p.297-309 and Lang A and Joanne S, 'The hidden world of WTO governance' in *European Journal of International Law,* Vol. 20, No. 3, 2009, p.575-614.
[104] Standard Trade Concerns: 161 G/SPS/R/29, paras. 38-39. Supported STC 19, 27, 39, 60, 219.
[105] Standard Trade Concerns: 3, 32, 39, 53, 87, 135, 144, 172, 244, 248, 255, 263, 265, 266, 271, 281, 283, 285, 286, 287, 293, 294, 298, 303. STC supported 7, 22, 27, 31, 54, 68, 74, 103, 104, 111, 159, 169, 176, 187, 197, 224, 238, 240, 279.
[106] Gebrehiwet, Y, Ngqangweni, S, and Kirsten, J.F, 'Quantifying the Trade Effect of Sanitary and Phytosantiary Regulations of OECD Countires on South African Food Exports' in *Agrekon*, Vol 46, No.1, p. 23-39.
[107] Personal Interview with DAFF Official, 18 October 2010.

This leads to a context where the in-country institutional framework for dealing with SPS issues at the WTO looks like policy siloôs and lacks systemic coordination. The reason for this lack of a national coordinating body appears to be a reflection of underlying politics in the region and internally to South Africa. First, South Africa directly engages with the various institutions with the IFSC as opposed to going through SADC. SADCôs role as a regional coordinating hub and voice at international standard setting institutions will only emerge once each member state government sets up a national SPS Coordinating Committee. For the time being, SADCôs role is to identify areas for technical capacity development and promote harmonisation with international standards, a relatively benign role that does not infringe on the sovereign right of South Africa to make its own policy decisions. All this means is that food safety authorities in South Africa still play a big role in implementing standards coming out of the IFSC and appears to prefer it that way.

Second, with each department and governmental level maintaining a specific competence, South African officials see little need for national coordination. Each engage with the IFSC based on their competence and international food safety standards trickle down through these connections, as highlighted in Figure 5. Whilst, this seems to work well, not having a one-stop-shop at the international or national level for food safety creates significant financial and administrative burdens. The decentralised approach to food safety at the international level results in high costs incurred by South Africa to send country representatives to each of meetings held by the relevant international institutional meetings. These departments each depend on their own individual funding and are unable to take advantage of a pooled financial resource specifically set aside for participation within the IFSC. According to a government official from DAFF, it costs an estimated R40 000 to send one South African country representatives to a single meeting and this therefore acts a hindrance for country participation. Although there exist a number of international funding pots available to provide financial assistance to national government departments, there is uneasiness about making use of this funding due to what they fear may result in underlying conditions to then participate in a manner that may be unfavourable to their specific needs. Due to the lack of centralisation of the IFSC, a consequence of this is that sources of information regarding important information such as financial assistance are not available at a single point of information. As a result there is a lack of awareness of resources available to enable increased participation within international institutions that conclude on matters that ultimately affect all Member States.

In addition to this, each department is responsible for ensuring that they have received all the necessary information specific to the role that they play within the South African food safety from the international organisations specific to them so that they can remain informed about and maintain international standards. In the same vein, in order to learn about the South African food safety system, one needs to enquire from all three different participating departments in order to ascertain their

involvement in food safety as there exists no single overarching body that is able to provide all this information from one single point. An effort to fill this gap seems to be being made by the South Africa Food Safety Initiative operating under the auspices of the Consumer Goods Council of South Africa (CGCSA) as a self-funding organization, through membership and subscriptions. [108] Although this attempt leaves a lot to be desired by way of effectiveness, efforts seem to be pointing in a much-needed direction as attempts can be seen in efforts to bring legislation drawn up by the DoH and DAFF under one roof. This however remains a task that should be undertaken by the government and not the private sector as food safety remains primarily the responsibility of the public sector. According to IPAP documents there have been some government initiatives by the DTI to set up a food safety agency but this still remains in the formative stage. The administrative challenge posed by maintaining a decentralized approach to food safety regulation is efficient regulatory activity, information sharing and effective risk assessment and management. Given that international institution participation is the prevue of particular government departments, the potential for interdepartmental duplication of efforts exists or information sharing across departments regarding new rules or requirements does not automatically occur. In times of a food safety crisis, government efficiency and sharing of information are critical to assessing and managing risk effectively. Indeed, the lack of a major food safety crisis in South Africa and Southern Africa as a region could help explain why South Africa maintains such a decentralized approach. Unlike, the EU, US or Canada no major food safety crisis has not shaken public or international confidence in food safety regulation. The lack of such a crisis has arguably mollified public interest in food safety regulation in South Africa and the region and placed little pressure on officials to streamline or centralize the South African approach. This situation is unlike in the EU where the emergence of the European Food Safety Agency is linked to concern over public confidence.[109]

Given the challenges of food safety regulation in South Africa that appear to be reinforced through a cooperative, decentralized IFSC, one must wonder if centralizing all aspects of food safety regulation at the international level might inspire a similar approach in South Africa. Certainly, centralizing food safety regulation at the international level could help in easing financial and administrative pressures of attending and participating in a multitude of international institutions. In addition, creating a South Africa Food Safety Agency could improve efficiency of government operations and resulting in less financial costs, increased coordination and improved flexibility for dealing with any food safety crises that might emerge at the national and regional level.

Another major challenge that arises from as a result of the cooperative IFSC is that each government department involved in food safety is also involved in other activities and so food safety does not take

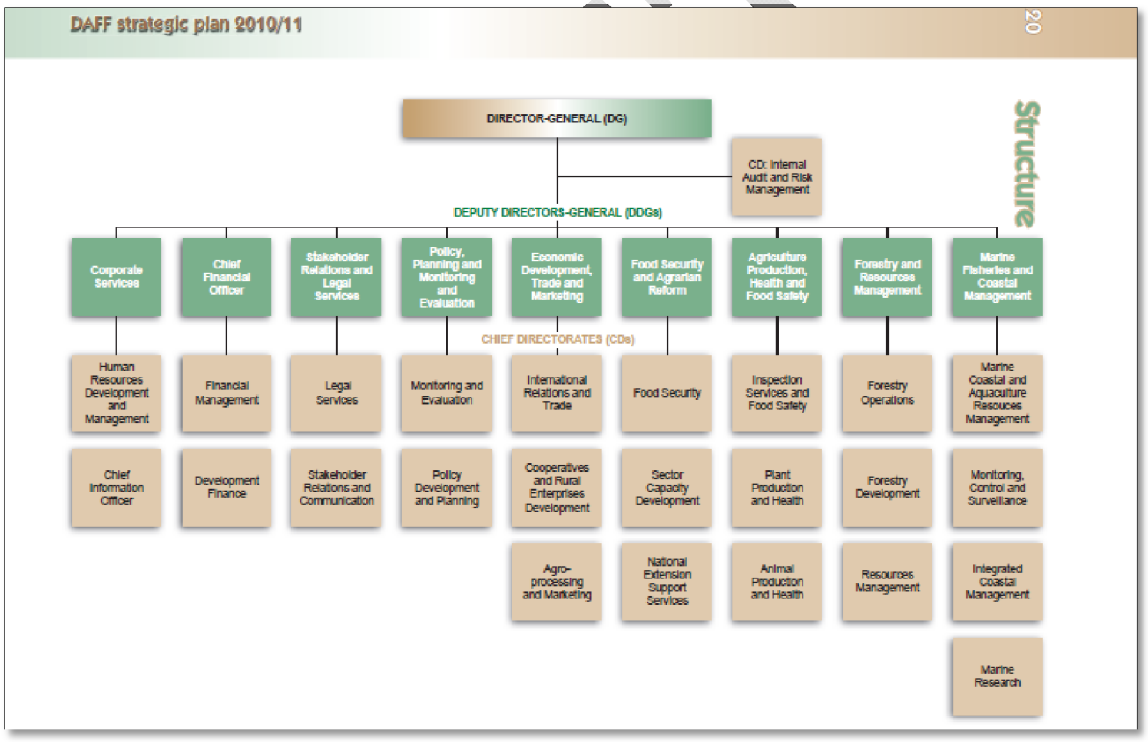
[108] Food Safety Initiative, 'http://www.foodsafetyinitiative.co.za/fsi.aspx'. Accessed on 13 February 2011.
[109] Alemanno A: Trade in Food: Regulatory and Judicial Approaches in the EC and WTO, Cameron, May, 2007.

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priority within the departments. Food safety is only important to specific departments in as far as it relates to either agriculture, fishery and forestry; health; or trade. In and of itself, food safety is not a priority focus area in either department.

DAFF has multiple responsibilities that are outlined in its structure and food safety is a focus area in one of the programmes under Inspection Services and Food Safety. Figure 7 shows the structure of the department. The department is headed by the Director General. Beneath the Director General is the CD: Internal Audit and Risk Management. The Deputy Director-Generals below oversee nine different sections that can be divided into seven different programmes. Food safety issues fall under Programme 5 which deals with Agriculture Production, Health and Food Safety. Inspection Services and Food Safety is responsible for food safety and the quality of regulated products and provides for the national inspection service of regulated products intended for local and international markets.[110]

Figure 7: DAFF Strategic Plan



Source: Strategic Plan for the Department of Agriculture Forestry and Fisheries 2011/11, http://www.nda.agric.za/docs/Policy/StratPlan2010.pdf

The budget breakdown for DAFF is outlined in Figure 8 below where the financial allocation to Programme 5 is indicated. The amount allocated to food safety is R226 256 000 which is only about 6% of the total DAFF budget.

[110] Department of Agriculture Forestry and Fisheries, 'Strategic Plan for the Department of Agriculture Forestry and Fisheries 2011/12', http://www.nda.agric.za/docs/Policy/StratPlan2010.pdf. Accessed 13 February 2011.

Figure 8. DAFF Budget Breakdown

Programme	Total Costs	Expenditure Rank
Programme 1 : Administration	R 413 747 000	4
Programme 2: Production and Resource Management	R 449 668 000	3
Programme 3: Agriculture Support Services	R 1 731 128 000	1
Programme 4: Trade and Agricultural Development	R 80 749 000	6
Programme 5:Food Safety and Bio-security	R 358 822 000	5
Programme 6: Forestry	R 501 452 000	2
Total	R3 535 536 000	

Source : Strategic Plan for the Department of Agriculture Forestry and Fisheries 2011/11

Although food safety is indeed a priority within this department it remains an area that is not given primary attention by the department in and of itself. The cooperative IFSC seems to have allowed for division of the responsibility for food safety across the different domestic government departments but then a subsequent result is that neither of these departments attend to it as a primary focus area. The Food Safety and Bio-Security program receives the second lowest amount of money in the departmental budget. The decentralised approach to food safety results in each department needing to finance food safety in relation to their function amongst other responsibilities and this contributes to food safety not necessarily being given primary importance in the department. The DoH also has a similar structure. It is divided into six programmes. Food safety falls in Programme 6: International Relations, Health Trade and Health Product Regulation under sub-programme Food Control and Non-Medical Health Product Regulation.

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Figure 9: Expenditure Trends

EXPENDITURE TRENDS

PROGRAMME	AUDITED OUTCOME			ADJUSTED APPRO-PRIA-TION	REVISED ESTIMATE	MEDIUM-TERM EXPENDITURE ESTIMATES		
R' MILLION	2006/07	2007/08	2008/09	2009/10		2010/11	2011/12	2012/13
Administration	175.6	213.6	241.0	260.4	260.4	264.8	299.9	330.9
Strategic Health Programmes	2 658.8	3 096.3	4 129.5	5 791.3	5 791.3	7 294.9	8 774.4	10 147.6
Health Planning and Monitoring	301.3	309.1	342.1	396.4	396.4	406.9	426.1	454.2
Health Human Resources Man-agement and Development	1 576.0	1 613.6	1 705.3	1 799.0	1 799.0	1 897.1	2 011.7	2 111.8
Health Services	6 566.7	7 465.8	8 949.9	10 086.1	10 086.1	11 528.8	12 083.5	12 681.7
International Relations, Health Trade and Health Product Regula-tion	59.7	64.3	96.6	90.2	90.2	104.5	112.4	118.5
TOTAL	**11338.0**	**12 762.7**	**15 464.5**	**18 423.5**	**18 423.5**	**21 497.0**	**23 707.9**	**25 844.7**
	CHANGE TO 2009 BUDGET ESTIMATE			1 365.4	1 365.4	1 883.0	2 845.1	3 944.3

Source: National Department of Health Strategic Plan 2010/11-2012/13, http://www.doh.gov.za/docs/misc/stratplan/201011-201213a/index.html

Figure 10: Expenditure Estimates

EXPENDITURE ESTIMATES

TABLE : INTERNATIONAL RELATIONS, HEALTH TRADE AND HEALTH PRODUCT REGULATION

Subprogramme	Audited outcome			Adjusted appropriation	Medium-term expenditure estimate		
R million	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12	2012/13
Multilateral Relations	31.4	36.7	61.5	45.1	50.7	57.1	58.6
Food Control and Non-medical				6.5			
Health Product Regulation	3.5	4.3	6.4		7.2	7.8	8.1
Pharmaceutical and Related				38.7			
Product Regulation and Management	24.8	23.3	28.7		46.6	47.4	51.7
Total	**59.7**	**64.3**	**96.6**	**90.2**	**104.5**	**112.4**	**118.5**
Change to 2009 Budget estimate				3.3	3.7	(1.4)	(0.9)

Source: National Department of Health Strategic Plan 2010/11-2012/13, http://www.doh.gov.za/docs/misc/stratplan/201011-201213a/index.html

The expenditure trends in Figure 9 reflect the distribution of the International Relations, Health Trade and Health Product Regulation. The food safety budget that falls under the Food Control and Non-medical Health Product Regulation receives the least portion of the budget.

As Figure 10 highlights yet again, the different departments play different roles within South Africa and are also involved in the different international institutions. This leads to a context where the in-country institutional framework for dealing with SPS issues at the WTO looks like policy silos and lacks systemic coordination. This is meant to be rectified by constituting a national SPS committee within South Africa that coordinates roles and activities of all the public entities involved, as per SADC rules, but this committee has fallen into abeyance after briefly being established in the late 1990ôs.[111]

Indeed, the different departments play different roles within South Africa and are also involved in the different international institutions but this in-country institutional framework for dealing with food safety issues in the IFSC results in policy silos that perpetuate a lack of systemic coordination in this area. Each department has a specific mandate that pertains to food safety but neither is responsible for food safety and this poses a threat to systemic coherence which could prove to be disastrous in the event of a food safety crisis.

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[111] Personal Interview with DAFF Official October 18, 2010.

Trade Ramifications

In most African countries, agriculture supports the survival and well-being of up to 70 per cent of the population and so one of the major concerns of developing countries is the implications of the SPS Agreement on trade. Developing countries are able to benefit from the SPS Agreement because it provides for an international framework for sanitary and phytosanitary among countries regardless of their economic strength or economic capacity.[112] Without this agreement developing countries would be at a disadvantage when challenging unjustified trade restrictions. The agreement reduces uncertainty about the conditions for selling to an unspecified market and ensures that efforts to produce safe food for export services are not thwarted by the imposition of protectionist measures disguised as health measures.

This chapter briefly looks at the way in which these measures influence trade both internally within the region and externally. The chapter begins with a brief analysis of some of the articles within the SPS Agreement that have ramifications on developing countries. It also looks at whether or not the presence of the IFSC is aiding in the reduction of the high need for technical assistance and capacity within the SADC region. While the SPS Agreement does not require that all countries choose the food safety standards developed and adopted by Codex, the Agreement explicitly states that those countries that do base their food standards on Codex recommendations would be in compliance with WTO obligations. This chapter will show how such provisions are particularly important for developing countries with less sophisticated food safety regulatory systems. It allows these countries to avoid heavy investment in scientific capacity-building and allows them to rather depend on the expertise developed by the Codex. This provision was implemented in the hope that it would encourage a convergence of national food safety standards and reduce trade distortions. In practice however, many developed countries continue to establish national food safety measures through existing domestic procedures.

The SPS Agreement in principle helps to facilitate trade from developing to developed countries by improving transparency, promoting harmonisation and preventing the implementation of SPS measures that cannot be justified scientifically. The Agreement itself tries to facilitate this by acknowledging the special problems that developing countries can face in complying with the SPS measures and allowing for special and differential treatment and facilitating trade in several ways.

[112] The World Trade Organization, WTO Agreement Series, Sanitary and Phytosanitary Measures, Geneva, 2010, p 24.

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The key features of the SPS Agreement are risk assessment and risk management in determining appropriate measures. The major objectives are to protect the human, animal and plant health of all member countries, as well as protect members from arbitrary or unjustifiable discriminations due to different sanitary and phytosanitary standards. The Agreement supports the intentions of the regulations set by the standard-setting bodies as it relates to unhindered trade by underlining the following key principles:

Article 3: Harmonisation

Article 3 in the SPS Agreement highlights the principle of harmonization which gives recognition to the guidelines and recommendations of the relevant international standard-setting bodies by encouraging Members to set their sanitary standards on international standards and also to participate actively in the activities of the bodies. International standards are oftentimes higher than those actually applied in many countries but the SPS Agreement explicitly permits governments to choose their own standards. This principle allows developing countries the opportunity adhere to an international standard that has already been scientifically justified without having to invest a food safety system to develop them. However, on the other hand, developing countries have been also termed 'standards-takers' due to their lack of participation in international standard-setting activities in spite of their relatively high membership on these bodies.[113] The result is that non-participatory countries are forced to accept and try to meet international standards that may not accommodate unique constraints pre-existing in local environments. The SPS Committee maintains close communication with the OIE, IPPC and Codex with the objective of securing the best available scientific advice as well as to ensure the unnecessary duplication of effort. In light of the limited resources available to developing countries, this relationship between the WTO and the international standard-setting bodies proves to their advantage as the burden of proof required to justify more stringent regulations lies with the country imposing it. In addition to this, in the event that a developing country raises a specific trade concern in light of a newly imposed regulation by another member, consultations and dispute settlement procedures under Article 11 allow for procedures among members where upon the members concerned can call upon the expert advice of the relevant international organisations. This is helpful in that the developing country does not have to itself undertake the scientific research necessary to come against the countries imposing the more stringent standards.

[113] The World Bank, Standards and Global Trade: A Voice for Africa, Washington, D.C., 2003

Article 4: Equivalence

An acceptable measure of risk can be achieved in a number of different ways and the principle of equivalence highlighted in Article 4 of the SPS Agreement protects member countries against unjustifiable trade restrictions, even if the product is produced under less stringent SPS standards but still meets the appropriate level of protection of the importing country. Different countries may have different policy objectives and therefore the principle of harmonization allows for exceptions. The SPS Agreement encourages countries to accept as equivalent the sanitary and phytosanitary measures of other countries even if those measures differ from their own. The exporting member is obligated to objectively demonstrate to the importing member that the measures achieve the importing member`s level of protection. The correct application of the equivalence principle can play an important role in trade negotiations for countries in southern Africa whereby countries are only required to show that the measures it applies provide the same level of health protection and should therefore be accepted as equivalent.

Article 5: Risk assessment

In Article 5 member countries are obliged to supply scientific evidence when applying sanitary standards that differ from an international standard. Risk assessment techniques that are used to determine the appropriate level of protection or the level of sanitary standard being implemented, should also be based on techniques developed by the relevant international organizations. This key principle of the Agreement is probably one of the most debated ones as it could be wrongly used as a discriminatory measure, especially in applying the precautionary principle provided for in Article 5.7 of the Agreement. The precautionary principle allows measures to be taken where there is a possibility of harmful effects. It does not require full scientific verification of the threat before action is taken and allows members to act on their own initiative to take action to avert threats to public health. According to this article, a Member country may provisionally adopt a sanitary measure when available scientific information is insufficient or where an international standard has not yet been developed. In some cases, in the event of emergency situations, this might be unavoidable, but it could also be used to the detriment of developing countries in southern Africa that might not possess the expertise to dispute discriminatory measures or bring attention to a risk assessment that did not take the prevailing economic factors or the potential damage in terms of loss of production or trade into consideration.[114]

[114] Bruckner. G., An evaluation of the alternatives and possibilities for countries in the Sub-Saharan Africa to meet the sanitary standards for entry into the international trade in animals and animal products. Tralac Working Paper, October 2005

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Article 6: Recognition of disease-free areas

Article 6 makes explicit provision for the adaptation and recognition of regional conditions, especially as it relates to disease-free areas or zones. This is an important trade-facilitating concept as it can be related to the ability of developing countries to establish and maintain disease-free zones. The capacity to maintain a disease-free zone is a large determinant of developing countries ability to export their agricultural commodities and plays a large role in securing and facilitating entry into the export market.

Article 7: Transparency

The SPS Agreement makes sanitary and phytosanitary measures more transparent. Article 7 endorses a key principle that highlights that member countries are obliged to notify the WTO of their sanitary measures or their intent to apply trade restrictions based on a risk assessment. Developed countries typically implement qualitatively and quantitatively higher SPS standards than developing countries.[115]

Each WTO member must set up offices to respond to requests for more information on new or existing measures. This provides developing countries with access to the resources they need to ensure that they are informed of current measures, have adequate time to comment on pending measures as well as prepare for the actions they may have to take to remain compliant. Ministers from WTO member countries decided that the interval between the publication of a new SPS measure and the date of its entry into force would not be less than six months except in an emergency so as to allow sufficient time for compliance with the new measures. Developing countries are further assisted by the agreement in that countries that need more time to implement certain programmes or to implement specific obligations of the agreement can ask the SPS Committee to grant them further delays.

Article 9: Technical Assistance

Developing countries are able to benefit from the provisions in the SPS Agreement that call for assistance for developing countries to enable them to strengthen their food safety and animal and plant health protection systems. Article 9 in the SPS Agreement encourages the provision of technical assistance to other countries either bilaterally or through international organisations. Such technical assistance which can be provided in many different forms allows countries on the receiving end of

[115] Henson, S. et al., Impact of Sanitary and phytosanitary measures on developing countries, Centre for Food Economics Research, University of Reading, Reading, UK.

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this assistance to adjust to and comply with sanitary and phytosanitary measures necessary to achieve the appropriate standards required in their export markets. The WTO Secretariat also provides training to ensure that officials in developing countries fully understand their obligations under the agreement. This training also teaches them how to make use of the agreement to both increase their exports and improve the health conditions in their own countries. At times, particularly substantial investments are required in order for an exporting developing country to achieve the appropriate level of sanitary and phytosanitary requirements of an importing member, in this situation, the article encourages the importing member to consider providing the relevant technical assistance required to permit the developing country member to maintain and expand its market access opportunities. Many countries provide direct support recognising that the best way to ensure the safety of their consumers is to ensure that their imported products are produced safely.

Article 10: Special and Differential Treatment

Article 10 of the SPS Agreement endorses a principle that accounts for the various special needs of developing countries, particularly least developing countries. It provides scope for the phased introduction of new sanitary and phytosanitary measures, and longer time frames for compliance so as to maintain opportunities for their exports. This article also enables the SPS Committee to grant developing countries specified time-limited exceptions from obligations under the SPS Agreement. African countries are able to take advantage of this provision by requesting that their development needs to be taken into consideration.

The SPS Agreement lies at the core of the IFSC and ties together all the institutions that play a role in food safety within the SADC region. The institutional structure of the of the IFSC impacts the implementation of the SPS Agreement within this region and this has far-reaching consequences with regards to the efficacy of the IFSC within SADC. The next section looks at how the decentralised nature of the IFSC has had major ramifications on the development of a more coherent regional strategy for the attainment of improved food safety standards within the region.

The Impact of the IFSC on Regional Food Safety Governance in southern Africa

The SPS Annex to SADC Protocol on Trade speaks to the creation of a SADC SPS Committee but this has not been established yet. The precursor to its creation is that every SADC member has a national SPS committee but this condition has not yet been met. The difficulty lies in that most of the member states also have decentralised food safety governance structures which are a replica of the example outlined within the international arena. This proves to be very difficult because to increase the participation of SADC countries at the international level, a regional effort needs to be put forward

to address their concerns. The large discrepancies in economic development between these countries make it very difficult for each country to participate individually in all the relevant international organisations. SADCôs recent admittance as an observer at the SPS Committee also demands that Southern Africaôs regional food safety complex becomes more lucid. This is necessary to fully utilize this position to the benefit of all the SADC member states to ensure consistency in the regional approach to international activities. A coherent regional strategy is necessary due to the difficulties encountered by a number of the member states to attend all the meetings and stay current on SPS deliberations. The SADC SPS committee would also subsequently allow for a more effective dissemination of discussions at the WTO. The move would give these African countries an added boost in their ability to follow WTO work on food safety, animal and plant health, and to trade more effectively.

In a 2009 paper published by the SADC Secretariat entitled Measures to Address Food Security in the SADC region, SADC highlighted that food and safety standards imposed by OECD countries ï predominantly by the EU remained the most distorting market access barriers for SADC countries.[116] This remains a problem in spite of efforts put forward by the IFSC to address these concerns. Food safety standards are seen as imposed by the international community onto developing countries because of their low participation in the IFSC. In spite of attempts by the international institutions to increase the technical capacity of these countries, international food safety measures remain burdensome to many developing countries. A commonly cited example is the EU traceability regulation. EU importers refuse to deal with suppliers who cannot guarantee both the traceability and food safety of the consignments supplied. This regulation goes beyond international standards and so imposes a burden on the importing countries. The food safety standards, through heavy domestic support from international trading partners, have made SADC agricultural prices uncompetitive resulting in rendering the production of cotton and sugar unattractive within the region in spite of the competitive advantage. The need to further improve technical capacity within the SADC region remains high as the prevailing mind-set underscored by SADC in the 2009 publication remains that the EU has undermined the development opportunities of large numbers of smallholder farmers in the SADC region. SADC calls for a need for better access to OECD markets for labour-intensive manufactured goods, primary agricultural goods such as sugar and cotton, and processed agricultural products. This is because the protection of domestic agricultural markets as a result of SPS measures in OECD countries together with export subsidies has reduced prices for many SADC farmers and rendered their products uncompetitive.[117]

[116] Southern African Development Committee: Measures to address food security in the SADC region, http://www.sadc.int/fanr/food_security/docs/Measures%20to%20Address%20Food%20Security%20in%20the%20SADC%20Region.pdf., p. 44
[117] Ibid. p. 44.

SPS measures have therefore resulted in depressed prices for many SADC farmers, thereby rendering their products uncompetitive within the international market. Until such a time as SPS measures are not seen as protectionist non-tariff barriers to trade, there remains much room for a concerted cooperative efforts in this area. SADC purports that protecting domestic agricultural markets through food safety standards, such as SPS measures and the traceability regulation, and by subsidising exports, the OECD countries protect their markets in order to support their farmers.

Intra-SADC trade

In light of some of the issues that remain an impediment to the growth of international trade between developing and developed countries, another interesting question looks whether the SPS provisions that are outlined in the SPS Annex and based on the WTO Agreement are furthering trade within the SADC region. Unfortunately, it seems that there also remains a lot of work to be done to fully benefit from this agreement even within the region. Intra-SADC trade in food is constrained by the lack of harmonization of SPS measures between member states, other non-tariff barriers, and rules and disciplines governing trade in agricultural products. The challenges are to expedite the harmonization of SPS measures and the rules and disciplines governing trade in agricultural products, as well as to reduce non-tariff barriers. In addition to this, the SADC Trade Protocol was designed for formal trade but informal trade accounts for a bulk of trade within the region, and so the traders of these goods are not able to benefit from the implementation of trade liberalisation measures.

Although the SPS Agreement has provisions that SADC countries can use to their advantage, the major issue lies in the effectiveness of the IFSC in the actual implementation of this agreement in the region. The notion of timing shows that during the development of the IFSC, this complex was indeed filling gaps within the food safety system in the SADC region as the specific concerns arose however; the notion of high demand from a technical capacity perspective remains an issue. The lack of technical capacity is therefore part of the reason that many African countries have not been able to fully engage and benefit from the SPS Agreement in spite of provisions that are in place to assist these countries.

Conclusion

This dissertation has established that an International Food Safety Complex exists and has been influential in building food safety regulatory capacity in Southern Africa. The conditions under which this interlocking governance structure emerged suggest that cooperation amongst the component international institutions has been a constant feature of this complexôs evolution. Integral to this has been the timing with which component institutions in the IFSC emerged and the demand for technical

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and financial assistance in Southern Africa for food safety regulation due to the developing country context. The notion of timing and demand has been given little attention in the international complex literature despite their importance as variables in understanding the emergence of international complexes and functional niches. Such a contention challenges the idea that competition amongst international institutions for policy space is a constant requirement in the emergence of interlocking governance structures and functional niches. Indeed, cooperation can also be a starting point for international complexes if component institutions are created as and when the need arises.

Cooperation can be reinforced as a trait of international complexes when existing institutions engage in cooperative endeavours like they did in the IFSC with the creation of such institutions as the Codex and STDF, or promoted the development of technical assistance programs like those lead by the EU.

The role of an IFSC that cooperates and sticks to its functional niches has resulted in a real development of capacity for food safety regulation in South Africa. Indeed, South African officials are active participants and fully engaged in food safety initiatives within the component institutions, albeit they do not participate as much as they could in the actual meetings. South Africa, in particular, has benefited from a cooperative IFSC and has become a regional leader in food safety regulation but does not act as a regional leader in advocating or representing SADC member state issues. That said, an IFSC that is based on cooperation with little overlap in activities presents some challenges. The cost for South Africa to participate in multiple different meetings in different organisations is a costly endeavour for this transitioning developing country. Despite the availability of a number of funding sources to assist with such challenges, South African officials do not partake of such initiatives as the Codex Trust Fund for lack of awareness not desire or need. This reinforces that a smattering of funding pots spread across different institutions in the complex available to developing countries can work against promoting effective participation and technical development. The decentralized approach of the IFSC appears to reinforce the structure of food safety regulation in South Africa where multiple government departments maintain specific roles with little to no national coordination. There is little national coordination because South African officials spend much time trying to keep up with implementing international standards and norms at the domestic level.

The presence of an IFSC in Southern Africa has been of benefit for food safety regulation in the region however there still remains a lot of work to do within this area. Both inter- and intra-African trade is still suffering as a result of the implementation of these food standards and there is still much work to do in the way of increasing food safety standards so that they do not negatively impact on much needed trade in the region. A fully implemented food safety complex within the southern African region would have a highly positive effect on ensuring access to safe and quality food. It would also help African states that maintain a comparative advantage in areas of agriculture, to export

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their goods to foreign markets. Given the role of food standards as non-tariff barriers to trade, the role of the IFSC has facilitated improved access to important economic markets which is a key component to the development of the region.

Further Research

The research undertaken in this dissertation primarily relied on the legal text of the SADC Agreement and on information provided in documents located in various government and academic literature. In principle therefore, this dissertation was unable to evaluate the extent to which the rules and regulations outlined in these documents are implemented in reality. An opportunity for research could be a further analysis into the extent the institutions both domestically and regionally are abiding by the provisions outlined in the texts by which they are governed.

Furthermore, this research looked very broadly at the application of sanitary and phytosanitary measures in SADC and then focused only on South Africa as a case study. To garner a more comprehensive analysis of the region`s application of SPS measures, this analysis could be done on more SADC countries to shed light on other perhaps other systemic issues which could contribute to a further understanding of the issues prevalent in the region.

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